

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA NO. 1:15-cv-00399</p> <p>SANDRA LITTLE COVINGTON, et al,)) Plaintiffs,)) vs.)) THE STATE OF NORTH CAROLINA, et) al.,)) Defendants.))</p> <p style="text-align: center;">DEPOSITION OF ALLAN J. LICHTMAN, Ph.D.</p> <hr/> <p style="text-align: center;">9:14 A.M. FRIDAY, FEBRUARY 12, 2016</p> <hr/> <p style="text-align: center;">OGLETREE DEAKINS NASH SMOAK & STEWART 4208 SIX FORKS ROAD SUITE 1100 RALEIGH, NORTH CAROLINA</p> <p>By: Denise Myers Byrd, CSR 8340, RPR</p>	<p style="text-align: right;">INDEX OF EXAMINATION Page</p> <p>By Mr. Farr..... 5</p> <p style="text-align: center;">--000--</p> <p style="text-align: right;">3</p>
<p style="text-align: center;">1 APPEARANCES 2 3 For the Plaintiffs: 4 SOUTHERN COALITION FOR SOCIAL JUSTICE 5 BY: ANITA EARLS, ESQ. 6 1415 W. North Carolina 54 7 Suite 101 8 Durham, NC. 27707 9 (919) 323-3380 10 AnitaEarls@Southerncoalition.org 11 12 TIN FULTON WALKER & OWEN 13 BY: ADAM STEIN, ESQ. 14 312 West Franklin Street 15 Chapel Hill, NC 27516 16 (919) 240-7089 17 astein@tinfulton.com 18 19 For the Defendants: 20 OGLETREE DEAKINS NASH SMOAK & STEWART 21 BY: THOMAS A. FARR, ESQ. 22 4208 Six Forks Road 23 Suite 1100 24 Raleigh, NC 27609 25 (919) 787-9700 Thomas.Farr@Ogletreedekins.com</p> <p>Also Present: Dalton Oldham</p> <p>The Reporter: Discovery Court Reporters and Legal Videographers, LLC BY: DENISE MYERS BYRD, RPR, CSR 8340 4208 Six Forks Road Suite 1000 Raleigh, NC 27609 (919) 424-8242 (919) 649-9998 direct denise@discoverydepo.com</p> <p style="text-align: center;">--o0o--</p> <p style="text-align: right;">2</p>	<p style="text-align: right;">INDEX OF EXHIBITS Page</p> <p>EXHIBIT DESCRIPTION Page</p> <p>1 Intentional Discrimination Against African Americans in the Adoption of North Carolina's Voter Information Verification Act, NAACP v McCrory Allan J. Lichtman, Ph.D. February 12, 2015 20</p> <p>2 Barry Burden Expert Report NAACP v McCrory, February 12, 2015 30</p> <p>3 Affidavit of Allan J. Lichtman, Ph.D. Dickson v Rucho, consolidated cases 32</p> <p>4 Racial Data 63</p> <p>5 Racial Data 63</p> <p>6 Second Affidavit of Allan J. Lichtman Dickson v Rucho, consolidated cases 89</p> <p>7 H-27N Effect of Adoption of Sutton 3 on Minority Voters 98</p> <p>8 S-27N Effect of Adoption of Senate Plan 1c on Minority Voters 101</p> <p>9 Sur-Rebuttal Report of Dr. Allan J. Lichtman to Reports Submitted by Expert for Defendants, January 29, 2016 Covington v State of North Carolina 146</p> <p style="text-align: center;">--o0o--</p> <p style="text-align: right;">4</p>

<p>1 ALLAN J. LICHTMAN, Ph.D., 2 having been first duly sworn or affirmed by the 3 Certified Shorthand Reporter and Notary Public 4 to tell the truth, the whole truth and nothing 5 but the truth, testified as follows: 6 EXAMINATION 7 BY MR. FARR: 8 Q. Could you please state your name. 9 A. Allan J. Lichtman. 10 Q. May I say Dr. Lichtman? 11 A. You may. 12 Q. Dr. Lichtman, we've met before, and you've had 13 many depositions, so I'm not even going to go 14 through all the preliminaries that some people 15 go through before a deposition, but I will ask 16 you, I know you will, to tell me if you 17 misunderstand or don't understand a question 18 that I've asked you and I will try to rephrase 19 it. 20 A. Thank you. 21 Q. Can you tell me what you did to prepare for the 22 deposition today. 23 A. Just read material and spoke to the attorneys. 24 Q. Do you remember what material you reviewed? 25 A. Mostly just my reports and I think briefly the</p> <p style="text-align: right;">5</p>	<p>1 Q. Do you have an understanding or an opinion 2 about how African Americans have been injured, 3 if at all, by the legislative plans? 4 A. I think African Americans are always injured 5 when you are, on the basis of race, placing 6 African Americans in legislative districts. 7 My understanding -- and I'm not a 8 lawyer, but I was involved in a lot of the Shaw 9 cases that this is an inherent injury to 10 African Americans. And there may well be other 11 injuries as well, such as diminished influence 12 in the legislature, inability to get African 13 American priorities represented there. 14 Q. You say the injury is when someone is placed in 15 a district because of their race? 16 A. When districts are created predominantly on the 17 basis of race according to a racial quota, yes. 18 My understanding of the interpretation 19 of that is that it is inherently injurious and, 20 as I said, there are other injuries that can 21 follow from that as well. 22 Q. Would that apply to districts that were 23 intentionally created with a black population 24 between 40 and 50 percent as well as districts 25 that are created above 50 percent?</p> <p style="text-align: right;">7</p>
<p>1 Hood report. 2 Q. Dr. Lichtman, do you understand what the 3 plaintiff's theory of this case is? 4 A. I can tell you my understanding of it. I'm not 5 a lawyer. 6 Q. That's fine. 7 A. And what I was asked to do. 8 Q. Okay. Tell me. 9 A. I was asked to assess whether or not it was 10 necessary to provide African American voters in 11 state legislative districts in North Carolina 12 districts drawn at or above 50 percent black 13 voting age population in the State of 14 North Carolina. 15 It is my understanding -- and it's not 16 just from the plaintiffs but from my own 17 knowledge -- that this was established by the 18 legislature and the legislature leadership as, 19 in effect, a quota for the districting process 20 in the State of North Carolina and that this is 21 an impermissible racial quota according to 22 plaintiff's theory. 23 Now, I can't hold plaintiffs to that 24 because I'm not an attorney. I'm just giving 25 you my understanding.</p> <p style="text-align: right;">6</p>	<p>1 A. Well, that's not a quota when you're dealing 2 with a broad range of districts. And that 3 would also depend upon your analysis under 4 guidance of the Supreme Court in Thornburg 5 versus Gingles of the levels of African 6 American concentration needed to provide 7 African Americans a realistic opportunity to 8 elect candidates of their choice. 9 So there's a second level of analysis 10 here. And, again, I'm not a lawyer, but it has 11 to do with how those districts are tailored. 12 Q. Okay. Dr. Lichtman, can you tell me what your 13 understanding is of the term polarized voting. 14 A. Yes. Polarized voting exists when there are 15 differences in the candidate preferences of 16 different racial groups. There is a pattern of 17 polarized voting when, not just in one election 18 but in a number of elections, voting is usually 19 polarized along racial lines. 20 In addition, polarized voting has two 21 distinct components. One is what's called 22 black cohesion, the extent to which blacks or 23 African Americans cohere behind candidates of 24 their choice. 25 And then the other component is bloc</p> <p style="text-align: right;">8</p>

<p>1 voting, to what extent do non-African Americans</p> <p>2 in North Carolina, predominantly whites, in</p> <p>3 elections vote against the preferences of</p> <p>4 African American voters. And the degree of</p> <p>5 polarized voting depends upon the differences</p> <p>6 between African American cohesion and</p> <p>7 non-African American or white bloc voting.</p> <p>8 Q. I'm going to ask you to give me your</p> <p>9 understanding of two different terms, if you</p> <p>10 could do that.</p> <p>11 A. Sure.</p> <p>12 Q. I'd like to know what you -- how you understand</p> <p>13 the terms statistically significant racially</p> <p>14 polarized voting versus legally significant</p> <p>15 racially polarized voting.</p> <p>16 A. Two entirely different concepts.</p> <p>17 Q. Okay. Why don't you start with statistically</p> <p>18 significant.</p> <p>19 A. That's a mathematical concept. That simply</p> <p>20 means, and nothing more, that the differences</p> <p>21 between African American -- I'll use the word</p> <p>22 white just for shorthand -- white voting is not</p> <p>23 due to a chance or random process, that is, if</p> <p>24 you're looking, say, at VTDs, voting districts</p> <p>25 or precincts, if you just threw them up in the</p> <p style="text-align: right;">9</p>	<p>1 politically significant racially polarized</p> <p>2 voting would mean that in a district or</p> <p>3 jurisdiction of a given concentration -- and</p> <p>4 again, I'll use, for simplicity, African</p> <p>5 Americans -- that given the cohesion of African</p> <p>6 Americans, white bloc voting is sufficient to</p> <p>7 usually defeat the candidates of choice of</p> <p>8 African Americans.</p> <p>9 And so that would depend upon a number</p> <p>10 of components: The degree of cohesion, the</p> <p>11 degree of bloc voting, turnout and the African</p> <p>12 American concentration in the district.</p> <p>13 Q. You said something about turnout.</p> <p>14 A. Yes.</p> <p>15 Q. What do you mean by that?</p> <p>16 A. That is, you cannot assess African American --</p> <p>17 and, again, I'm using African American, but</p> <p>18 this could apply to minorities, and I'll use</p> <p>19 that throughout, but I don't mean to limit it</p> <p>20 to that since you're asking me generic</p> <p>21 questions here.</p> <p>22 Q. And, Dr. Lichtman, I understand that. So you</p> <p>23 can just -- you don't need to qualify your</p> <p>24 answers that way unless I ask you a question</p> <p>25 where you need to qualify it.</p> <p style="text-align: right;">11</p>
<p>1 air, what are the chances of getting this</p> <p>2 pattern or if you're doing an exit poll, what</p> <p>3 are the chances that the differences are due to</p> <p>4 sampling error.</p> <p>5 And you can have statistically</p> <p>6 significant racially polarized voting if the</p> <p>7 samples or the number of units that you're</p> <p>8 analyzing are large enough even when the</p> <p>9 differences between the races are very small.</p> <p>10 You could have statistically significant</p> <p>11 racially polarized voting if the units or the</p> <p>12 sample is large enough when the difference is</p> <p>13 51 to 49.</p> <p>14 So it's critical to understand that</p> <p>15 statistically significant racially polarized</p> <p>16 voting says nothing about either the degree of</p> <p>17 racially polarized voting or the implications</p> <p>18 of racially polarized voting for the ability of</p> <p>19 African American to elect candidates of their</p> <p>20 choice in a district at any given level of</p> <p>21 African American concentration.</p> <p>22 I'm using African American here, but it</p> <p>23 could apply to any racial division.</p> <p>24 Secondly, I'm not a lawyer, but as I</p> <p>25 understand legally or sometimes it's called</p> <p style="text-align: right;">10</p>	<p>1 A. Okay.</p> <p>2 Q. So go ahead.</p> <p>3 A. So turnout is important because you cannot</p> <p>4 assess whether or not racially polarized voting</p> <p>5 is legally significant simply by looking at the</p> <p>6 concentration of African Americans alone in</p> <p>7 terms of the voting age population or any other</p> <p>8 population measure.</p> <p>9 Q. Can you stop for a second. Go off the record.</p> <p>10 (Discussion held off the record.)</p> <p>11 (Record Read.)</p> <p>12 THE WITNESS: So you've got to look at</p> <p>13 turnout in the particular -- let's call it a</p> <p>14 district. Could be a jurisdiction. Could be</p> <p>15 the State of North Carolina.</p> <p>16 We know, for example, Obama did really</p> <p>17 well in the 2008 Democratic primary in the</p> <p>18 State of North Carolina even though the black</p> <p>19 voting age population was around 21 percent</p> <p>20 because, in Democratic primaries, the African</p> <p>21 American turnout is much higher typically than</p> <p>22 the African American voting age population and</p> <p>23 therefore your assessment of the legal or</p> <p>24 political significance of white bloc voting</p> <p>25 cannot be assessed solely by looking at the</p> <p style="text-align: right;">12</p>

<p>1 voting age population. The same thing in 2 individual districts. 3 Typically in Democratic primaries, for 4 example, using this as an example, the African 5 American component of the Democratic primary is 6 much higher than the African American component 7 of the voting age population. I can go into 8 reasons for that, which are in my report, if 9 you like. 10 BY MR. FARR: 11 Q. Well, why don't we wait until we get to that 12 part in your report. 13 A. Of course. 14 Q. How do you -- are there different ways to 15 measure turnout as you just described it? 16 A. I don't know what you mean by different ways. 17 Q. How would you -- how would you assess actual 18 turnout of black voters in a district or in the 19 state? 20 A. Well, it depends on the state, but I'll tell 21 you how you do it in the State of 22 North Carolina. 23 Social scientists are fortunate in the 24 State of North Carolina; you have registration 25 by race. So you don't have to actually</p> <p style="text-align: right;">13</p>	<p>1 Q. Okay. Would that same concept be applicable to 2 turnout in the general election? 3 A. Yes. 4 MR. STEIN: Tom, here comes your 5 colleague. 6 (Discussion held off the record.) 7 BY MR. FARR: 8 Q. Okay. We'll come back to this probably when 9 we're going through your report, but I want to 10 ask you a different question now. 11 Do you understand the concept -- I 12 notice in your reports you've mentioned -- were 13 you an expert in DeGrandy? 14 A. I was. 15 Q. Okay. Do you understand -- what's your 16 understanding of what the term substantial or 17 rough proportionality means? 18 A. Right. In a Section 2 case, which I believe 19 DeGrandy was -- it's a long time ago, but I 20 think that's right -- one possible defense that 21 a jurisdiction could make or one possible 22 attack that plaintiffs could make has to do 23 with the election of African American 24 officials, particularly in the type of election 25 being challenged and whether or not those</p> <p style="text-align: right;">15</p>
<p>1 estimate turnout using ecological regression or 2 some other statistical estimation based upon 3 the VTDs or the precincts in a district. You 4 can directly measure turnout because we know 5 not how people voted but we do know their race. 6 Q. So in North Carolina, could you measure actual 7 turnout as a percentage of VAP? 8 A. You certainly could, but that's not the 9 critical element. The critical element is to 10 take the electorate -- and I've been talking 11 about Democratic primaries because it's 12 particularly relevant here and because you know 13 the race of the people who turned out. 14 The critical element is the African 15 American share of the turnout. So, again, I'm 16 speaking hypothetically. You might have a 17 district that's 45 percent African American in 18 voting age population, that is, the share of 19 those of voting age as 45 percent, but in a 20 Democratic primary, the share of those 21 registering Democratic or the share of those, 22 most critically, voting in the primary could be 23 55 or 60 percent, and that's the basis on which 24 nominations are made, not voting age 25 population.</p> <p style="text-align: right;">14</p>	<p>1 numbers relative to the total number of 2 officials in the office is roughly proportional 3 to some measure, say, voting age population or 4 citizen voting age population in the overall 5 population of the district or jurisdiction. 6 Q. Dr. Lichtman, I don't want to go through all 7 your cases because there's too many for me to 8 pronounce or remember -- 9 A. Me too. 10 Q. -- but have you ever offered expert testimony 11 in a case in support of plans that would 12 provide rough proportionality or substantial 13 proportionality to a minority group? 14 A. I certainly have offered testimony in support 15 of plans, and I may well have -- in Section 2 16 cases, I may, among many other issues, have 17 examined the issue of rough proportionality, 18 yes, but I can't recall the details of that at 19 the moment. 20 Q. Do you think that you ever testified in support 21 of either an enacted plan or an alternative 22 plan being proposed by a minority group that 23 suggested a sufficient number of districts to 24 provide rough proportionality? 25 A. I probably have in Section 2 cases, yes, but,</p> <p style="text-align: right;">16</p>

<p>1 again, I can't recall the details of that at</p> <p>2 the moment.</p> <p>3 Q. If you were advising a jurisdiction, how would</p> <p>4 you advise them to determine the number -- let</p> <p>5 me rephrase that.</p> <p>6 The districts that you talk about in</p> <p>7 your reports that are 40 percent plus black,</p> <p>8 did you call those opportunity districts?</p> <p>9 A. I think those in the State of North Carolina</p> <p>10 are districts that satisfy my understanding of</p> <p>11 the Voting Rights Act to provide realistic</p> <p>12 opportunities for African Americans to elect</p> <p>13 candidates of their choice.</p> <p>14 So put conversely, these are not</p> <p>15 districts in which white bloc voting usually is</p> <p>16 sufficient to defeat the African American</p> <p>17 candidates or candidates of choice of African</p> <p>18 Americans.</p> <p>19 Q. So is it your testimony that these districts</p> <p>20 that you've testified about in this case, would</p> <p>21 they satisfy, in your opinion, the Gingles</p> <p>22 elements?</p> <p>23 A. Yes.</p> <p>24 Q. And for purposes of this deposition -- well,</p> <p>25 how should we describe those districts? Are</p> <p style="text-align: right;">17</p>	<p>4 MS. EARLS: Objection to the form.</p> <p>2 BY MR. FARR:</p> <p>3 Q. Okay.</p> <p>4 A. I'm not sure I fully understand that. I don't</p> <p>5 usually -- and I have advised jurisdictions,</p> <p>6 and I don't usually tell them to limit the</p> <p>7 number of districts that provide realistic</p> <p>8 opportunities for African Americans to elect</p> <p>9 candidates of their choice.</p> <p>10 I think they should strive at least</p> <p>11 rough proportionality, although, again, that's</p> <p>12 not an exact measure, but I certainly don't</p> <p>13 tell them they have to limit it to that to</p> <p>14 avoid Section 2 issues.</p> <p>15 Q. So let me ask you a few questions about that.</p> <p>16 If the prior plan that the General</p> <p>17 Assembly inherited did not provide rough</p> <p>18 proportionality, would it be appropriate for</p> <p>19 the General Assembly in enacting a new plan to</p> <p>20 consider rough proportionality in your view?</p> <p>21 A. Among many other things, that would be</p> <p>22 appropriate.</p> <p>23 Q. And do you think it would be appropriate for a</p> <p>24 General Assembly to intentionally create a</p> <p>25 larger number of ability districts than what</p> <p style="text-align: right;">19</p>
<p>1 they opportunity districts? Are they equal</p> <p>2 opportunity districts? What is your -- so that</p> <p>3 we can have a discussion, how would you like</p> <p>4 for me to describe those districts?</p> <p>5 A. I tend to use the same terminology that</p> <p>6 Dr. Groffman uses, the expert in Thornburg</p> <p>7 versus Gingles. These are districts that</p> <p>8 provide realistic opportunities for African</p> <p>9 Americans to elect African American candidates</p> <p>10 or, in the rare instance, white candidates of</p> <p>11 choice. Or, if you prefer, you can call them</p> <p>12 districts in which African Americans have the</p> <p>13 ability to do so.</p> <p>14 Q. Okay. So I'll try to use the word realistic</p> <p>15 districts or ability districts when we talk</p> <p>16 about these going forward. Is that all right?</p> <p>17 A. Yes.</p> <p>18 Q. And we'll both know what I'm referring to?</p> <p>19 A. And if I'm confused, I'll let you know.</p> <p>20 Q. Well, I think I'm more likely to be confused,</p> <p>21 Dr. Lichtman.</p> <p>22 If you were advising a jurisdiction,</p> <p>23 what would you advise them to do to determine</p> <p>24 the number of ability districts that they</p> <p>25 should consider enacting?</p> <p style="text-align: right;">18</p>	<p>1 would equate to rough proportionality?</p> <p>2 A. I think that would be appropriate, although,</p> <p>3 again, on all these questions, there are lots</p> <p>4 of other considerations as well.</p> <p>5 Q. I understand.</p> <p>6 Lichtman Exhibit 1.</p> <p>7 (WHEREUPON, Defendants' Exhibit 1 was</p> <p>8 marked for identification.)</p> <p>9 THE WITNESS: What is this?</p> <p>10 BY MR. FARR:</p> <p>11 Q. Well, hopefully you'll recognize this.</p> <p>12 Dr. Lichtman, this originally was a very</p> <p>13 lengthy report.</p> <p>14 A. That's why I didn't recognize it. This is a</p> <p>15 piece of my report from the case involving --</p> <p>16 the case before Judge Schroeder recently. Is</p> <p>17 that what this is?</p> <p>18 Q. Exactly. Do you recognize it?</p> <p>19 A. Not exactly because it's just a piece.</p> <p>20 Q. Well, how about -- what I really want you to</p> <p>21 look at, Dr. Lichtman, is the section -- I</p> <p>22 could go get the 200-page exhibit if we need</p> <p>23 to.</p> <p>24 A. No, I don't think we need to. I don't dispute</p> <p>25 that this is it. I just didn't recognize it</p> <p style="text-align: right;">20</p>

<p>1 because, as I said, it's a piece of it.</p> <p>2 Q. Okay. I want you to turn to what's -- feel</p> <p>3 free to look at the entire exhibit,</p> <p>4 Dr. Lichtman, or if you want me to go get the</p> <p>5 full thing.</p> <p>6 A. No, I don't need to --</p> <p>7 Q. I want to ask you about the part that's marked</p> <p>8 on Page 23.</p> <p>9 A. Okay.</p> <p>10 Q. All right. So is it fair to say, then, in this</p> <p>11 report that you gave some testimony about</p> <p>12 racially polarized voting in North Carolina?</p> <p>13 A. I did. Not a complete analysis but to the</p> <p>14 extent it was relevant to the issues in that</p> <p>15 case.</p> <p>16 Q. Okay. Did you -- in your report, would you --</p> <p>17 would you turn to Page 23. I'd just like you</p> <p>18 to read into the record the sentence that you</p> <p>19 have that starts with "In the 2013 litigation."</p> <p>20 A. "In the 2013 litigation over</p> <p>21 North Carolina's 2011 plan, both the</p> <p>22 expert for plaintiffs, Dr. Ray Block,</p> <p>23 and the expert for the North Carolina</p> <p>24 General Assembly, Dr. Thomas Brunell,</p> <p>25 found substantial patterns of racially</p> <p style="text-align: right;">21</p>	<p>1 A. It's one way and it's an accepted way.</p> <p>2 Q. And turning back to Page 23, based upon the</p> <p>3 analysis that you did of the elections that are</p> <p>4 listed in Table 6, did you conclude that</p> <p>5 African Americans supported Democratic</p> <p>6 candidates at a unanimous level whereabouts</p> <p>7 two-thirds of the whites, on average, support</p> <p>8 Republican candidates?</p> <p>9 A. Near unanimous levels. Not quite unanimous.</p> <p>10 Q. I meant to say near. I'm sorry.</p> <p>11 Was that your testimony?</p> <p>12 A. Yes.</p> <p>13 Q. Now, would you consider that to be</p> <p>14 statistically significant racially polarized</p> <p>15 voting?</p> <p>16 A. Absolutely.</p> <p>17 Q. Is it legally significant racially polarized</p> <p>18 voting in a statewide election?</p> <p>19 A. In a statewide election.</p> <p>20 Q. Because all the elections you looked at were</p> <p>21 statewide, right?</p> <p>22 A. Yes. I didn't address that issue here for</p> <p>23 statewide, whether it would usually be</p> <p>24 sufficient statewide to defeat the African</p> <p>25 American candidate of choice. I'd have to go</p> <p style="text-align: right;">23</p>
<p>1 polarized voting across North Carolina.</p> <p>2 "The existence of such polarization</p> <p>3 was a central part of the State's claims</p> <p>4 in that case."</p> <p>5 Q. Okay. And then having cited that, did you</p> <p>6 offer data that you described as confirming</p> <p>7 those findings in this report?</p> <p>8 A. For a particular set of elections. I did not</p> <p>9 go through a general analysis of racially</p> <p>10 polarized voting. I think I looked at it in</p> <p>11 general elections because that was the issue at</p> <p>12 stake in this particular litigation, to what</p> <p>13 extent would Republicans benefit from</p> <p>14 reductions in African American voting relative</p> <p>15 to white voting, and therefore it was relevant</p> <p>16 to assess in general elections the degree of</p> <p>17 difference between white support for Democratic</p> <p>18 candidates and African American support for</p> <p>19 Democratic candidates.</p> <p>20 Q. Okay. And so you looked at exit polls?</p> <p>21 A. I did for this report.</p> <p>22 Q. For the elections listed in Table 6?</p> <p>23 A. Yes.</p> <p>24 Q. And is that an accepted way for experts in your</p> <p>25 field to measure racially polarized voting?</p> <p style="text-align: right;">22</p>	<p>1 through the elections and figure that out.</p> <p>2 That was not my purpose here.</p> <p>3 My purpose was to show this particular</p> <p>4 litigation that Republicans would substantially</p> <p>5 benefit from the reduction of African American</p> <p>6 relative to white voting.</p> <p>7 So I'd have to go back through these</p> <p>8 elections, but certainly in some of them it was</p> <p>9 legally or politically significant where the</p> <p>10 white bloc voting in a statewide election</p> <p>11 where, you know, depending on the year you had</p> <p>12 an African American voting age population</p> <p>13 somewhere around 20, 21 percent.</p> <p>14 It probably would have been usually</p> <p>15 legally significant but, again, I didn't do</p> <p>16 that analysis, and I'd have to do it to get a</p> <p>17 firm opinion on it.</p> <p>18 Q. Okay. Well, for example, Dr. Lichtman, looking</p> <p>19 at the 2004 presidential election on Table 6,</p> <p>20 would you think that the racially polarized</p> <p>21 voting in that election where President Bush</p> <p>22 received 73 percent of the vote, would you</p> <p>23 consider that to be legally significant or</p> <p>24 politically significant?</p> <p>25 A. President Bush received 73 percent of the vote</p> <p style="text-align: right;">24</p>

<p>1 in North Carolina? I don't think so.</p> <p>2 Q. 73 percent of the white vote.</p> <p>3 A. Of the white vote. Okay. I thought you said</p> <p>4 73 percent of the vote.</p> <p>5 Q. Thank you for clarifying that.</p> <p>6 A. I think -- again, when you're looking at legal</p> <p>7 or politically significant, you want to look at</p> <p>8 a person, but if you want to look at that</p> <p>9 individual election, you would say, yes, white</p> <p>10 bloc voting was sufficient in the State of</p> <p>11 North Carolina to defeat the candidate of</p> <p>12 choice of African Americans, that's correct.</p> <p>13 That wouldn't be true of every one of these,</p> <p>14 but it certainly would be true of that one.</p> <p>15 Q. And I just want to ask a few more questions.</p> <p>16 In the 2008 Senate race, you compared</p> <p>17 the vote between Senator Hagan and Senator --</p> <p>18 at the time Senator Dole?</p> <p>19 A. Yes.</p> <p>20 Q. Is it fair to say Senator Hagan was not an</p> <p>21 African American candidate?</p> <p>22 A. That is correct.</p> <p>23 Q. And then in the 2012 presidential election</p> <p>24 where you've listed that Romney received</p> <p>25 68 percent of the white vote versus 96 percent</p> <p style="text-align: right;">25</p>	<p>1 existence of politically significant racially</p> <p>2 polarized voting?</p> <p>3 A. In a state where African Americans are 20 to</p> <p>4 21 percent of the voting age population, in</p> <p>5 some cases you do get politically significant</p> <p>6 racially polarized voting, but you could not</p> <p>7 apply that to districts that are where the</p> <p>8 African American voting age population is much</p> <p>9 higher.</p> <p>10 Again, it's very important in talking</p> <p>11 about politically or legally significant</p> <p>12 racially polarized voting to understand it is</p> <p>13 specific to a jurisdiction or a district. It</p> <p>14 is not generic.</p> <p>15 Q. Could it be specific to the area in which the</p> <p>16 district could be drawn versus where it</p> <p>17 actually was drawn?</p> <p>18 A. We'd have to look. It's possible, but, again,</p> <p>19 you know, the analysis should be district</p> <p>20 specific. In other words, once you propose a</p> <p>21 district, you can analyze that district.</p> <p>22 Q. And you say that one of the things you'd have</p> <p>23 to actually look at is the actual turnout in</p> <p>24 terms of the number of black voters who turned</p> <p>25 out as a percentage of the total electorate in</p> <p style="text-align: right;">27</p>
<p>1 of the black vote that was received by Obama,</p> <p>2 would that indicate politically significant</p> <p>3 racially polarized voting in that election?</p> <p>4 A. I believe in that election it would.</p> <p>5 Q. Okay. And you averaged out the white and the</p> <p>6 black percentages at the bottom of Table 6; is</p> <p>7 that right?</p> <p>8 A. Yeah, rounded numbers, but, yeah, approximately</p> <p>9 right.</p> <p>10 Q. Do you think in a statewide election if the</p> <p>11 African American candidate of choice received</p> <p>12 93 percent of the black vote and the</p> <p>13 non-candidate of choice received 66 percent of</p> <p>14 the white vote, would that indicate legally</p> <p>15 significant -- or politically significant</p> <p>16 racially polarized voting?</p> <p>17 A. You would have to look at the individual</p> <p>18 election. You can't generically conclude that</p> <p>19 because it would also depend upon the white and</p> <p>20 African American shares of the turnout in the</p> <p>21 general election.</p> <p>22 It might. It might not. As we saw</p> <p>23 here, in some cases it was; in some cases it</p> <p>24 was not.</p> <p>25 Q. Could that indicate the possibility of the</p> <p style="text-align: right;">26</p>	<p>1 an election versus the percentage of white</p> <p>2 voters?</p> <p>3 A. You could look at that or you could simply --</p> <p>4 particularly in general elections, as we did</p> <p>5 here, you could look at outcomes. In other</p> <p>6 words, if the African American candidate of</p> <p>7 choice is winning and winning consistently in a</p> <p>8 district at a particular level, that would</p> <p>9 indicate that there was not legally significant</p> <p>10 racially polarized voting as we saw here in</p> <p>11 some of these elections.</p> <p>12 Q. And that wouldn't be impacted by the number of</p> <p>13 the voters who actually voted who were black</p> <p>14 versus the number of people that actually voted</p> <p>15 who were white?</p> <p>16 A. The actual outcome of elections are impacted by</p> <p>17 a number of factors: Absolutely, the</p> <p>18 components of the electorate, the degree of</p> <p>19 African American cohesion and the degree of</p> <p>20 white bloc voting or, conversely, what we call</p> <p>21 white crossover voting, which is just the</p> <p>22 converse of white bloc voting.</p> <p>23 And as we can see here from these</p> <p>24 statistics, the African American cohesion in</p> <p>25 general elections is much higher than the white</p> <p style="text-align: right;">28</p>

<p>1 bloc voting. That's why even in a jurisdiction 2 where the African American voting age 3 population is down around the 20 to 21 percent 4 level approximately, you still get instances of 5 African American candidates of their choice 6 winning.</p> <p>7 Q. Just to clarify that, and we may come back this 8 later, but in Table 6, did you measure -- you 9 measured the percentage of support of black 10 voters for a particular candidate?</p> <p>11 A. I did.</p> <p>12 Q. You did not measure how many blacks voted.</p> <p>13 A. No because that was not my purpose here.</p> <p>14 My purpose here was simply to show that 15 there was a wide disparity between the choices 16 of African Americans and the choices of whites.</p> <p>17 Remember, this was for a particular 18 litigation, and the table was designed for the 19 purposes of that litigation.</p> <p>20 Q. I understand, and I got that, but I'm just 21 clarifying this for my own understanding.</p> <p>22 A. Sure.</p> <p>23 Q. You didn't look at what percentage blacks 24 represented of the total number of people who 25 voted.</p> <p style="text-align: right;">29</p>	<p>1 Q. Okay. Dr. Lichtman, have you seen this before?</p> <p>2 A. Not that I can recall.</p> <p>3 Q. Okay. I'm going to represent to you this was a 4 report that was prepared by Dr. Gary Burden for 5 the same case in which you gave the report we 6 just looked at.</p> <p>7 Do you know Dr. Burden?</p> <p>8 A. Not personally. I've seen him, but --</p> <p>9 Q. Can you turn to Page 8 of this report. I just 10 want to ask you a question about something that 11 Dr. Burden said in this report.</p> <p>12 A. I'll do my best, but I have not seen this 13 before.</p> <p>14 Q. I know, but I will just ask you the question. 15 If you can answer it, great. If not, that's 16 fine.</p> <p>17 A. Fair enough.</p> <p>18 Q. I'm looking at the paragraph on Page 8 where 19 Dr. Burden is talking about preferences of 20 black and white candidates in the Democratic 21 primary for president in 2008.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you see where he concludes that there was 25 racially polarized voting in the Democratic</p> <p style="text-align: right;">31</p>
<p>1 A. No, and I didn't look at the percentages 2 received by each candidate, which would have 3 given you, given these racially polarized 4 voting numbers, an indication of whether or not 5 across the State of North Carolina the white 6 bloc voting was sufficient to defeat the 7 candidate of choice of African Americans 8 because that was not my purpose here.</p> <p>9 Q. It gets confusing, Dr. Lichtman, and I want to 10 make sure somebody reading this understands 11 what you're talking about. That's why I'm 12 asking these questions here.</p> <p>13 A. I'll clarify it again. All I'm talking about 14 here for the purposes of this litigation was 15 the gap between African American preference and 16 white preferences --</p> <p>17 Q. Right.</p> <p>18 A. -- to show that to whatever extent you reduce 19 African American turnout relative to white 20 turnout, that benefits Republicans.</p> <p>21 Q. Okay. All right. I'm going to hand you 22 something that's going to be Exhibit 2.</p> <p>23 (WHEREUPON, Defendants' Exhibit 2 was 24 marked for identification.) 25 BY MR. FARR:</p> <p style="text-align: right;">30</p>	<p>1 primary for president in 2008?</p> <p>2 A. I do.</p> <p>3 Q. My question is: Do you agree that that was so?</p> <p>4 A. Yes.</p> <p>5 Q. Was that -- that's all I have on that.</p> <p>6 A. Are you done with this?</p> <p>7 Q. I am.</p> <p>8 (WHEREUPON, Defendants' Exhibit 3 was 9 marked for identification.) 10 BY MR. FARR: 11 Q. Could you tell us what this is, Dr. Lichtman. 12 A. I'm not sure. 13 Q. Just take your time. 14 A. I think this was the first affidavit I filed in 15 the Dickson litigation. 16 Q. Okay. I think that's right. 17 Did you review this before coming 18 today? 19 A. Briefly. 20 Q. Okay. I'll have a few questions on this. 21 A. Sure. 22 Q. Could you turn to -- it says -- it's not 23 numbered, but it looks like it's Paragraph 6, 24 and at the top of the page it says Document 25 Ex. 960.</p> <p style="text-align: right;">32</p>

<p>1 A. Yes. I'm there.</p> <p>2 Q. I wanted to ask you about the LULAC case you</p> <p>3 mention there.</p> <p>4 A. Yes.</p> <p>5 Q. Did you testify in LULAC?</p> <p>6 A. Yes.</p> <p>7 Q. Let me ask you, before I go any further, to</p> <p>8 define some terms for me.</p> <p>9 A. Sure.</p> <p>10 Q. As a professional in the field, if the single</p> <p>11 majority race is the -- or single minority race</p> <p>12 is the majority in a district, as a</p> <p>13 professional in the field, what was the term or</p> <p>14 definition that you would use to describe that</p> <p>15 district?</p> <p>16 A. I don't know what you mean by majority because</p> <p>17 there are many, many ways of measuring</p> <p>18 majority: Total population, voting age</p> <p>19 population, citizen voting age population --</p> <p>20 Q. Let me clarify.</p> <p>21 A. -- turnout, registration.</p> <p>22 Q. Let me clarify that.</p> <p>23 A. Sure.</p> <p>24 Q. The majority of the voting age population.</p> <p>25 A. Yeah. You call it a single-race majority</p> <p style="text-align: right;">33</p>	<p>1 Q. Okay. All right. Do you recall how Justice</p> <p>2 Kennedy defined a coalition district?</p> <p>3 A. Yes. To the best of my recollection, a</p> <p>4 coalition district is one where you have not</p> <p>5 necessarily a single-race majority district but</p> <p>6 you have a commonality in voting patterns among</p> <p>7 different minority groups.</p> <p>8 Q. Okay. All right. In that type of district,</p> <p>9 would you -- would you believe it would be</p> <p>10 likely that non-Hispanic whites would be the</p> <p>11 minority group in that district?</p> <p>12 MS. EARLS: Objection to the form.</p> <p>13 BY MR. FARR:</p> <p>14 Q. Okay. You can answer.</p> <p>15 A. Yeah, likely. Not necessarily. And again, I</p> <p>16 assume you're defining minority majority the</p> <p>17 same way you did in the first place in terms of</p> <p>18 voting age population, not on some other</p> <p>19 measure.</p> <p>20 Q. Yeah. We'll just stick to voting age</p> <p>21 population. I'm just trying to get some</p> <p>22 definitions down.</p> <p>23 So if, say, for example, blacks and</p> <p>24 Hispanics together represented a majority in</p> <p>25 the district, do you think it would be likely</p> <p style="text-align: right;">35</p>
<p>1 voting age population district.</p> <p>2 Q. Would you call it a majority-minority district</p> <p>3 or just a majority district?</p> <p>4 A. Those are less descriptive because you could</p> <p>5 have a majority-minority district where there</p> <p>6 is not a single-race majority, which is what I</p> <p>7 understood your question to be. So ipso facto,</p> <p>8 a single-race majority district would also be a</p> <p>9 majority-minority district, but it is not true</p> <p>10 that a majority-minority district is</p> <p>11 necessarily a single-race minority district.</p> <p>12 Q. Have you read the Supreme Court decision of</p> <p>13 Strickland?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know how Justice Kennedy in his opinion</p> <p>16 defines what a majority-minority district is?</p> <p>17 A. I don't recall specifically, but I do</p> <p>18 understand in the Bartlett decision that</p> <p>19 Justice Kennedy spoke of, for a successful</p> <p>20 Section 2 litigation to satisfy the first prong</p> <p>21 of Gingles, you needed a majority district with</p> <p>22 respect to whatever racial group is being dealt</p> <p>23 with but that that was not necessary for a</p> <p>24 jurisdiction crafting a redistricting plan.</p> <p>25 That's my understanding.</p> <p style="text-align: right;">34</p>	<p>1 that non-Hispanic whites would be a minority</p> <p>2 percentage of the voters in that district?</p> <p>3 A. Of the voters, not necessarily.</p> <p>4 Q. Of the citizen -- or the voting age population.</p> <p>5 A. Ipso facto, if minority groups are over</p> <p>6 50 percent, that means -- if you're comparing</p> <p>7 whites to that combined minority group as</p> <p>8 opposed to an individual minority group, it</p> <p>9 follows automatically that whites are going to</p> <p>10 be the minority.</p> <p>11 Q. Okay.</p> <p>12 A. They could still be the plurality.</p> <p>13 Q. When you say whites, we're referring to</p> <p>14 non-Hispanic whites?</p> <p>15 A. That's how I understood it.</p> <p>16 Q. Okay. Do you recall how Justice Kennedy</p> <p>17 defined the term crossover district?</p> <p>18 A. Yes. And as I understand it, that is a</p> <p>19 district where you have crossover votes from --</p> <p>20 let's simplify it -- whites for, say, African</p> <p>21 Americans or another minority group in terms of</p> <p>22 their candidates of choice.</p> <p>23 Q. Under that definition, would non-Hispanic</p> <p>24 whites be the majority group in such a</p> <p>25 district?</p> <p style="text-align: right;">36</p>

<p>1 A. Typically, yes, but, again, there are many, 2 many ways of defining this. 3 Q. Now, that brings me to LULAC. 4 A. Yes. 5 Q. Do you recall how Justice Kennedy defined the 6 term influence district? 7 A. Yes. Again, I'm doing this from memory. The 8 case is over a decade old, but to the best of 9 my recollection, an influence district is a 10 district -- again, I'll use the term African 11 Americans. Some are Hispanics as well. 12 Q. For our purposes, unless one of us says 13 otherwise, we're going to treat whites as 14 non-Hispanic whites and African Americans as 15 the group we're referring to. 16 A. Fair enough. 17 So it would be a district whereby 18 African Americans did not have the ability to 19 usually elect African American candidates or 20 candidates of their choice but were 21 sufficiently numerous in the district to have 22 an influence over the outcome. 23 Q. What does that mean, to have an influence 24 over -- 25 A. Well, that could mean many different things,</p> <p style="text-align: right;">37</p>	<p>1 adopted by a jurisdiction to satisfy 2 requirements under Section 2? 3 A. I don't recall having done that. That doesn't 4 mean that I didn't -- you know, that I have 5 never said it might be desirable to create 6 influence districts. I don't ever recall 7 saying you can satisfy Section 2 with influence 8 districts. 9 And again, I'm not a lawyer so all 10 these questions about satisfied legal 11 requirements are my analyses as a social 12 scientists. 13 Q. I want you to turn to Paragraph 9. I think I'm 14 going to have more questions about House 15 District 8 as we look at some of your tables, 16 but do you see the sentence where you say 17 "However, House District 8 is a 50 percent plus 18 black voting age district and the white 19 candidate won with more than 68 percent of the 20 vote"? 21 A. Yes. 22 Q. Did you make any -- what election are you 23 referring to there, just to be clear? 24 A. I don't recall. 25 Q. Can you maybe read the paragraph.</p> <p style="text-align: right;">39</p>
<p>1 but typically, when you talk about influence, 2 it means that, in theory, that their priorities 3 and considerations and interests would be taken 4 into account. 5 Q. Dr. Lichtman, again, correct me if I'm wrong, 6 but you said you were an expert in the LULAC 7 case. 8 A. Yes. 9 Q. Did you testify in support of an influence 10 district in that case? 11 A. I don't recall. I recall my testimony focused 12 on ability-to-elect districts. And what I 13 recall most specifically about the case -- 14 again, it's over a decade old -- was that the 15 Supreme Court accepted my opinion based upon 16 the same methodologies used here, that 17 Congressional District 23 did not provide 18 Hispanic voters a realistic opportunity to 19 elect candidates of their choice. And based 20 upon my testimony and analysis, they 21 invalidated that district. 22 I don't recall anything about influence 23 districts, but it doesn't mean it wasn't there. 24 Q. Have you ever given testimony in support of an 25 argument that influence districts could be</p> <p style="text-align: right;">38</p>	<p>1 A. Okay. 2008, 2010. 2 Q. Did you try to study why the white candidate 3 won House District 8? 4 A. Let me look at this. I can't say whether I did 5 elsewhere, but it doesn't appear that I did in 6 this paragraph. 7 My only point here was victory -- I did 8 study that it was not the candidate of choice 9 of African Americans. So, yes, I did study it 10 to that degree using ecological regression. 11 My point here was the victory of a 12 white candidate who is not an African American 13 candidate of choice was not the result of 14 drawing a district below 50 percent plus black 15 voting age population, and, in fact, given the 16 patterns of the vote, even if you had drawn 17 this at 60 percent voting age population, the 18 black candidate would have won. 19 Q. The white candidate? 20 A. I'm sorry. The white candidate. Excuse me. 21 I'm a little dyslexic. 22 Q. Did you look to see if the white candidate 23 would have won if the district had been drawn 24 to 65 percent black voting age population? 25 A. I didn't. I thought 60 was more than</p> <p style="text-align: right;">40</p>

<p>1 sufficient to show it was not as a result of an</p> <p>2 insufficient concentration of black voting age</p> <p>3 population.</p> <p>4 I don't believe there are any 65</p> <p>5 percent black districts in North Carolina under</p> <p>6 either camp.</p> <p>7 Q. Have you testified in support of ability</p> <p>8 districts that have a black population of</p> <p>9 65 percent or above?</p> <p>10 A. I'm sure I have.</p> <p>11 Q. If you didn't study whether the black candidate</p> <p>12 would have won with 65 percent black voting age</p> <p>13 population, how do you know that percentage</p> <p>14 wouldn't have been an appropriate level of</p> <p>15 black voting age population with that district</p> <p>16 to give blacks an ability-to-elect district?</p> <p>17 A. I'm not sure I understand the question. Could</p> <p>18 you repeat it or --</p> <p>19 Q. Well, tell me how you decide what the right</p> <p>20 percentage is for an ability-to-elect district.</p> <p>21 A. In any given set of districts, you look at</p> <p>22 patterns of elections to assess to what extent</p> <p>23 you need to draw districts with given</p> <p>24 concentrations to give African Americans a</p> <p>25 realistic opportunity to elect candidates of</p> <p style="text-align: right;">41</p>	<p>1 because that district was drawn below 50</p> <p>2 percent black voting age population and would</p> <p>3 certainly not justify a blanket rule that you</p> <p>4 needed to draw districts at 50 percent plus.</p> <p>5 Q. We're getting off topic.</p> <p>6 A. Okay. Sorry. I thought that's what you were</p> <p>7 asking me.</p> <p>8 Q. First of all, that district was not an</p> <p>9 under-50-percent district, was it?</p> <p>10 A. It was not. That's right. That's my point.</p> <p>11 And the African American candidate of choice</p> <p>12 still lost. That was the point of this</p> <p>13 analysis.</p> <p>14 Q. But is there a point at which you could have</p> <p>15 created that district with sufficient black</p> <p>16 voting age population to allow the black</p> <p>17 candidate of choice to be elected?</p> <p>18 A. Certainly not at 60. I don't know if it would</p> <p>19 have been at 65 or 70. And it's very unlikely</p> <p>20 you'd be able to create a 65 to 70 percent</p> <p>21 black voting age population district without</p> <p>22 diminishing African American opportunities in</p> <p>23 other districts.</p> <p>24 Q. Have you studied that?</p> <p>25 A. No, but my general knowledge is if you're going</p> <p style="text-align: right;">43</p>
<p>1 their choice.</p> <p>2 Realistic opportunity does not mean</p> <p>3 guaranteed outcomes. There are going to be</p> <p>4 cases in which -- even in very heavy African</p> <p>5 American districts, given the reality of</p> <p>6 politics, African American candidates of choice</p> <p>7 may not win, which is why you look at patterns</p> <p>8 rather than individual elections.</p> <p>9 Q. Okay. Well, I'm going to ask you a lot of</p> <p>10 questions about Table 1, which is on Page 964,</p> <p>11 but I do want to ask you a question now about</p> <p>12 House District 8.</p> <p>13 A. Yes.</p> <p>14 Q. Am I reading this correctly that you found that</p> <p>15 there was racially polarized voting in House</p> <p>16 District 8 in the Democratic primary in 2008,</p> <p>17 2010?</p> <p>18 A. Yes.</p> <p>19 Q. And was the black candidate of choice defeated?</p> <p>20 A. Yes.</p> <p>21 Q. So would that indicate it was legally</p> <p>22 sufficient or politically significant racially</p> <p>23 polarized voting?</p> <p>24 A. In that particular election in that particular</p> <p>25 district, a voter would also indicate it's not</p> <p style="text-align: right;">42</p>	<p>1 to concentrate at that extreme level, you're</p> <p>2 going to have to find African Americans to</p> <p>3 bring in from that district from lots of other</p> <p>4 districts. That's a very, very high level of</p> <p>5 African American concentration, extreme level,</p> <p>6 and from my general knowledge, that attempt to</p> <p>7 do so would diminish African American</p> <p>8 opportunities elsewhere.</p> <p>9 Q. But you haven't studied in North Carolina</p> <p>10 whether creating House District 8, say, for</p> <p>11 example, at 65 percent would diminish</p> <p>12 ability-to-elect districts elsewhere?</p> <p>13 A. I have not specifically studied that, but, as I</p> <p>14 said, from my general knowledge of</p> <p>15 North Carolina and my general knowledge of how</p> <p>16 you draw districts, which is pretty large, it</p> <p>17 is virtually certain that you could not create</p> <p>18 a district that's 65, 70 percent and -- without</p> <p>19 diminishing African Americans opportunities</p> <p>20 elsewhere.</p> <p>21 Q. But you haven't made a local study of that area</p> <p>22 of the state to reach that conclusion?</p> <p>23 A. No. And none of your experts have suggested --</p> <p>24 Q. I didn't say that our experts --</p> <p>25 A. All right. Fair enough.</p> <p style="text-align: right;">44</p>

<p>1 Q. In your report, we've heard the term 2 particularized analysis. Did you make a 3 particularized analysis to see what level of 4 black VAP would be needed to create House 5 District 8 as an ability-to-elect district? 6 A. To what I thought was a more than sufficient 7 extent, yes. 8 Q. So what black percentage should have it been 9 created at? 10 A. Well, like as I said, even if it was more than 11 60 percent of the vote, the African American 12 candidate of choice would not have won. 13 Did I go beyond that to say what might 14 have happened at 70 percent, no, and I did not 15 think that was necessary. 16 Q. You didn't look to see what would happen at 17 65 percent? 18 A. No. 19 Q. Or 62 percent? 20 A. I might have. I might have. 21 Q. Is it in your report? 22 A. No. 23 Q. Okay. Have you testified in favor of districts 24 that have a black voting age population of 25 65 percent as being necessary to provide an</p> <p style="text-align: right;">45</p>	<p>1 individual districts like this. You focus on 2 patterns. 3 And as I've explained, if you created 4 this district at 65 percent or above, that 5 would have implications for the entire plan and 6 for the ability of African Americans to elect 7 candidates of their choice elsewhere. 8 MR. FARR: Do you mind if we take a 9 break? I need to take a break. 10 MS. EARLS: Yes. 11 (Brief Recess: 10:41 to 10:46 a.m.) 12 BY MR. FARR: 13 Q. Dr. Lichtman, I wanted to ask you a question 14 kind of about Paragraph 12 in Exhibit 3. 15 So, again, correct me if I use the 16 terms in a way that is not appropriate to your 17 understanding or what you stated before, but 18 stuff gets confusing to me occasionally. 19 A. Sure. 20 Q. You're saying in your reports that an 21 ability-to-elect district can be created with a 22 black voting age population of 40 percent to 23 49 percent? 24 A. That's right. And when I talk about realistic 25 opportunity districts or ability districts, I</p> <p style="text-align: right;">47</p>
<p>1 ability-to-elect district? 2 A. Not in the past 30 years. 3 Q. Do you have any cases in Mississippi? 4 A. Yes, way back when. 5 Q. Not recently? 6 A. Not recently. Oh, wait a minute, there was -- 7 yes, there was a particularized case in some 8 local jurisdictions where I did testify that it 9 had to be over 65 percent because of the 10 general patterns in those districts, not 11 because of an analysis of a single district. 12 That's why you can't just look at a 13 single district. You've got to look at 14 patterns. Yes, there have been some local 15 cases in Mississippi where the patterns are 16 very different than the patterns here. 17 Q. Statewide patterns or local patterns? 18 A. Local patterns. 19 Q. Okay. Would this House District 8 indicate a 20 local pattern that you needed to create the 21 district with a black voting age population of 22 above 60 percent? 23 A. Not necessarily because, as I said, it may well 24 be even at 65 it would not elect an African 25 American. Plus you don't focus just on</p> <p style="text-align: right;">46</p>	<p>1 am not -- and maybe this got a little confused 2 and why you're confused -- I am not talking 3 about black voting age population majority 4 districts. 5 The finding in my report is it is not 6 necessary to create 50 percent plus black 7 voting age population districts to create 8 ability-to-elect or realistic-opportunity-to- 9 elect, and that does not mean in every single 10 district that African American candidates or 11 African American candidates of choice are 12 necessarily going to win because you don't 13 guarantee outcomes. You only create 14 opportunities. 15 And so throughout, when I'm talking 16 about rough proportionality, when I'm talking 17 about ability or opportunity districts, that 18 must not be confused with black majority 19 districts. In fact, when I have advised 20 jurisdictions, and we've discussed that, I have 21 advised districts it is not necessary to create 22 black majority districts. 23 Q. I wasn't confused by that. 24 A. Okay. I don't know what you were confused by, 25 then.</p> <p style="text-align: right;">48</p>

<p>1 Q. That wasn't something I was confused by.</p> <p>2 A. I want to make sure it's clear because we got</p> <p>3 into this rough proportionality and all that,</p> <p>4 and I did not mean rough proportionality in</p> <p>5 terms of black majority districts. I meant</p> <p>6 that in terms of ability-to-elect districts.</p> <p>7 Sometimes it can get a little confusing.</p> <p>8 Q. I think we said that before. I understood</p> <p>9 that's what your testimony was.</p> <p>10 A. All right. Fair enough.</p> <p>11 Q. Now, if you created a district in</p> <p>12 North Carolina above 50 percent, would that</p> <p>13 give African Americans the ability to elect</p> <p>14 their candidate of choice?</p> <p>15 A. Yes, as would districts above 40 percent. It</p> <p>16 follows tautologically.</p> <p>17 Q. Okay. I want you to read into the record --</p> <p>18 just so we get the whole thing, could you read</p> <p>19 into the record Paragraph 13 of Exhibit 3.</p> <p>20 A. [As Read] "Tables 4 to 5, show the results</p> <p>21 of creating 50 percent plus African</p> <p>22 American districts for State House and</p> <p>23 State Senate districts. As compared to</p> <p>24 the benchmark plan, the proposed plan</p> <p>25 needlessly packs African Americans into</p> <p style="text-align: right;">49</p>	<p>1 possibility is that it could also diminish</p> <p>2 African American influence overall in the</p> <p>3 redistricting plan.</p> <p>4 Q. Okay. And maybe you've explained this to me</p> <p>5 before, but when you say injuries inherent,</p> <p>6 what do you mean by that?</p> <p>7 A. The very nature of creating districts</p> <p>8 predominantly drawn on the basis of race,</p> <p>9 particularly when it is based upon a particular</p> <p>10 unnecessary racial quota. That in and of</p> <p>11 itself, according to my understanding of the</p> <p>12 Sher decisions and those that followed, that</p> <p>13 constitutes an injury unto itself independent</p> <p>14 of any other injuries that might be possible.</p> <p>15 Q. So, Dr. Lichtman, here's something that I don't</p> <p>16 quite understand. If you intentionally would</p> <p>17 draw a district at what you claim is the</p> <p>18 percentage needed to create an effective</p> <p>19 ability district, how is race not predominant</p> <p>20 in the construction of that type of district?</p> <p>21 A. Because it doesn't necessarily mean the</p> <p>22 subordination of other considerations.</p> <p>23 And I am not suggesting a racial quota</p> <p>24 here. I am suggesting there is a broad range</p> <p>25 of African American voting age population by</p> <p style="text-align: right;">51</p>
<p>1 districts greater than 50 percent in</p> <p>2 their voting age population. The result</p> <p>3 was to substantially diminish the</p> <p>4 influence of African American voters in</p> <p>5 other House districts.</p> <p>6 "As indicated in Table 4, the</p> <p>7 existing benchmark House Plan has 32</p> <p>8 districts that are 30 percent or more</p> <p>9 black in their voting age population,</p> <p>10 compared to 26 in the state-passed</p> <p>11 proposed State House Plan.</p> <p>12 "As indicated in Table 5, the</p> <p>13 existing benchmark Senate Plan has 15</p> <p>14 districts that are 30 percent or more</p> <p>15 black in their voting age population,</p> <p>16 compared to 10 in the state-passed</p> <p>17 proposed State Senate Plan."</p> <p>18 Q. And then just looking at Paragraph 14,</p> <p>19 Dr. Lichtman, is it fair to say that in 13 and</p> <p>20 14 you're describing the injury resulting to</p> <p>21 African Americans because of 50 percent</p> <p>22 districts -- the decline of their influence in</p> <p>23 districts that are in the 30 percent range?</p> <p>24 A. I think we discussed that previously where I</p> <p>25 said the injury is inherent, but another</p> <p style="text-align: right;">50</p>	<p>1 which you can draw districts. Moreover, this</p> <p>2 is actually based on an analysis of what is</p> <p>3 necessary to provide African American voters a</p> <p>4 realistic opportunity or an ability to elect</p> <p>5 candidates of their choice.</p> <p>6 A 50 percent quota is not based on any</p> <p>7 realistic assessment of the level necessary to</p> <p>8 provide African American voters a realistic</p> <p>9 opportunity to elect candidates of their choice</p> <p>10 and therefore is a racial quota without</p> <p>11 justification in terms of what is necessary for</p> <p>12 ability or realistic opportunity to elect.</p> <p>13 I'm not a lawyer, but my understanding</p> <p>14 is it's therefore not narrowly tailored to meet</p> <p>15 any compelling state interest.</p> <p>16 Q. Okay. Let me ask you a few questions about</p> <p>17 that.</p> <p>18 Do you think the fact that the State</p> <p>19 drew a district -- intended to draw a district</p> <p>20 at above 50 percent, does that in your mind</p> <p>21 mean that race predominated just because of</p> <p>22 that fact?</p> <p>23 A. Given the facts in North Carolina, absolutely,</p> <p>24 yes.</p> <p>25 Q. Did you ever study the enacted plans in</p> <p style="text-align: right;">52</p>

<p>1 North Carolina or any of the alternative plans</p> <p>2 to see what criteria was used to draw the</p> <p>3 districts besides the 50 percent plus one</p> <p>4 standard?</p> <p>5 A. No. I simply looked at the 50 percent plus one</p> <p>6 standard, saw that it was a racial quota and</p> <p>7 saw that the racial quota was not based upon</p> <p>8 any realistic assessment of the level of black</p> <p>9 voting age population needed to provide</p> <p>10 realistic opportunities.</p> <p>11 Q. Okay. You've told me that.</p> <p>12 My question is, simply, did you look at</p> <p>13 any other criteria that was used to construct</p> <p>14 any of the enacted 2011 districts or the</p> <p>15 alternative proposals?</p> <p>16 A. I simply looked at the 50 percent and whether</p> <p>17 that was necessary.</p> <p>18 Q. Okay. And you say that using 50 percent plus</p> <p>19 one is a quota but what you're proposing as a</p> <p>20 range is not a quota? Can you explain that to</p> <p>21 me?</p> <p>22 A. Yes. Two reasons why it's not a quota:</p> <p>23 One, it doesn't have this talismanic</p> <p>24 percentage. It doesn't say it has to be at</p> <p>25 this percentage or above.</p> <p style="text-align: right;">53</p>	<p>1 this.</p> <p>2 A. Okay.</p> <p>3 Q. And let me say I think a lot of your other</p> <p>4 reports are redundant of this stuff that's in</p> <p>5 this exhibit. So I hope to not go over the</p> <p>6 reports in the same detail because I think you</p> <p>7 repeat the same tables.</p> <p>8 A. Not exactly.</p> <p>9 Q. Okay. Well, then, I'm going to ask you to</p> <p>10 explain if there's a difference.</p> <p>11 A. There are differences.</p> <p>12 Q. Okay. All right. I wanted to ask you in the</p> <p>13 analysis you did in Table 1, you were examining</p> <p>14 elections in the 2003 House districts; is that</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Did you -- when did you do this report?</p> <p>18 A. I don't remember. It was several years ago.</p> <p>19 Q. It was after the 2010 census?</p> <p>20 A. I think that's right. Yes.</p> <p>21 Q. All right. Did you make any inquiry to see</p> <p>22 whether, when you did this report, the 2003</p> <p>23 House districts complied with North Carolina's</p> <p>24 requirements for the population deviation based</p> <p>25 upon the 2010 census?</p> <p style="text-align: right;">55</p>
<p>1 Secondly, it is based upon an</p> <p>2 assessment of the level of a district needed to</p> <p>3 provide realistic opportunities for African</p> <p>4 American voters to be able to elect African</p> <p>5 American candidates or candidates of their</p> <p>6 choice, and therefore it is not a simple quota</p> <p>7 that says it has to be this percentage or above</p> <p>8 regardless of what the evidence shows with</p> <p>9 respect to what is needed to provide African</p> <p>10 Americans a realistic opportunity to elect</p> <p>11 candidates of their choice.</p> <p>12 Q. Do you think that the range that you support is</p> <p>13 necessary to provide African American voters a</p> <p>14 realistic opportunity?</p> <p>15 A. I think districts at 40 percent or above, which</p> <p>16 is a very broad range, does provide African</p> <p>17 Americans a realistic opportunity to elect</p> <p>18 candidates of their choice, yes.</p> <p>19 Q. Is it necessary to do that at 40 percent or</p> <p>20 above in North Carolina to provide a realistic</p> <p>21 opportunity?</p> <p>22 A. I think so, yes. I think the evidence shows</p> <p>23 that.</p> <p>24 Q. Okay. And, Dr. Lichtman, when you -- let's</p> <p>25 turn to Table 1. I have a lot of questions on</p> <p style="text-align: right;">54</p>	<p>1 A. No.</p> <p>2 Q. Did you attempt to analyze whether the 2003</p> <p>3 districts could be created in 2011 based upon</p> <p>4 any North Carolina constitutional criteria for</p> <p>5 drawing House districts?</p> <p>6 A. Whether the 2003 districts could have been</p> <p>7 created later? I don't quite understand the</p> <p>8 question.</p> <p>9 Q. Let me try again.</p> <p>10 Are you aware of the fact that there's</p> <p>11 state constitutional criteria for following</p> <p>12 legislative districts?</p> <p>13 A. I know they exist, but I didn't look at them.</p> <p>14 Q. So in looking at the 2003 districts, you did</p> <p>15 not attempt to determine if the 2003 districts</p> <p>16 in 2011 would comply with the state</p> <p>17 constitutional criteria for drawing districts?</p> <p>18 A. No. I was simply concerned with the results of</p> <p>19 the elections of those districts while those</p> <p>20 districts were in existence.</p> <p>21 Q. Okay. Now, can you tell me in Table 1,</p> <p>22 percentage black VAP in the 2000 census,</p> <p>23 there's lots of different ways to measure black</p> <p>24 VAP. Do you recall what that -- what category</p> <p>25 were you using? Is that single race black or</p> <p style="text-align: right;">56</p>

<p>1 multi race black or do you remember?</p> <p>2 A. I don't remember, but I think it was all</p> <p>3 blacks.</p> <p>4 Q. What would that mean?</p> <p>5 A. Multi race would be included, but I don't</p> <p>6 remember precisely. I'd have to check that</p> <p>7 because it was a while ago.</p> <p>8 Q. Okay. And did you attempt to analyze the</p> <p>9 non-Hispanic white population in the 2003</p> <p>10 districts under the 2000 census?</p> <p>11 A. I don't recall if I did or not. I think I just</p> <p>12 looked at the black concentration.</p> <p>13 Q. And then for the -- the next column -- let's</p> <p>14 clarify this. Table 1, the column on the far</p> <p>15 left side refers to House districts that were</p> <p>16 created in the 2003 House Plan?</p> <p>17 A. Right.</p> <p>18 Q. And the next column is percentage black VAP in</p> <p>19 the 2000 census?</p> <p>20 A. Right, for the same districts.</p> <p>21 Q. Right. And you clarified that you think that's</p> <p>22 any part black voting age population?</p> <p>23 A. I think so, but it was several years ago. I'd</p> <p>24 have to check that.</p> <p>25 Q. In fairness to you, Dr. Lichtman, I think</p> <p style="text-align: right;">57</p>	<p>1 A. I think I just looked at the Democratic</p> <p>2 primary, African American component of turnout,</p> <p>3 and I looked at the percentage of African</p> <p>4 Americans among Democratic registrants.</p> <p>5 Q. Okay. I think that's right.</p> <p>6 Now, I'm going to get into something</p> <p>7 that could get me into a lot of trouble. I</p> <p>8 want you to tell me how you determine the next</p> <p>9 column. It says results of the 2008 Democratic</p> <p>10 primary and then you've got black; white;</p> <p>11 white: not choice.</p> <p>12 Tell me what that column represents.</p> <p>13 A. That represents whether or not the actual</p> <p>14 results of elections in each of those districts</p> <p>15 resulted in the nomination of an African</p> <p>16 American candidate or, in the case of a white</p> <p>17 candidate, whether that white candidate was the</p> <p>18 candidate of choice of African American voters</p> <p>19 or not.</p> <p>20 Q. Okay. And how did you determine that?</p> <p>21 A. Ecological regression.</p> <p>22 Q. And, Dr. Lichtman, tell me what that means.</p> <p>23 A. Ecological regression?</p> <p>24 Q. Uh-huh.</p> <p>25 A. That's the same methodology that was used by</p> <p style="text-align: right;">59</p>
<p>1 you're right.</p> <p>2 Then the next column is percentage</p> <p>3 black VAP 2010 census?</p> <p>4 A. Yes.</p> <p>5 Q. And did that also mean any part black in the</p> <p>6 2010 census?</p> <p>7 A. I believe that's correct, but, again, I'd have</p> <p>8 to check that. That was a number of years ago.</p> <p>9 Q. And did you look at the non-Hispanic white</p> <p>10 population in any of these districts under the</p> <p>11 2010 census?</p> <p>12 A. I don't recall, but, again, my focus was on the</p> <p>13 black concentration.</p> <p>14 Q. Did you look in either 2000 or 2010 the</p> <p>15 percentage of registered voters in these</p> <p>16 districts who were African Americans?</p> <p>17 A. I did later but not at this time.</p> <p>18 Q. Okay. So let me ask you this: Did you -- I</p> <p>19 think -- I know you did to the extent you</p> <p>20 looked at the Democratic registration figures.</p> <p>21 A. Yes.</p> <p>22 Q. Did you ever look at the entire district to</p> <p>23 determine whether any of these districts were</p> <p>24 majority black in terms of the number of</p> <p>25 registered voters?</p> <p style="text-align: right;">58</p>	<p>1 Dr. Groffman in the Thornburg versus Gingles</p> <p>2 case. It's the same method I used in the LULAC</p> <p>3 case that was authoritatively cited by Justice</p> <p>4 Kennedy's opinion in that case. It's a</p> <p>5 methodology that I've written about in my book</p> <p>6 "Ecological Inference" and in numerous</p> <p>7 methodological articles and have used thousands</p> <p>8 of times.</p> <p>9 And it is a methodology whereby you</p> <p>10 look at the precincts or voter tabulation</p> <p>11 districts and you look at -- in each, I'll call</p> <p>12 them precincts, the votes for the various</p> <p>13 candidates and then you look at the African</p> <p>14 American and non-African American component of</p> <p>15 those precincts.</p> <p>16 Q. And what are you looking at for that part?</p> <p>17 A. Well, in North Carolina, we have VAP and</p> <p>18 turnout by race. So you have -- you have</p> <p>19 precise measures whereby you can determine the</p> <p>20 black and non-black component of each precinct</p> <p>21 and then that gives you an equation which will</p> <p>22 estimate for each candidate the percentage of</p> <p>23 blacks and non-blacks voting for each</p> <p>24 candidate. And from that ecological regression</p> <p>25 methodology, you can determine which candidates</p> <p style="text-align: right;">60</p>

<p>1 were candidates of choice of the racial groups.</p> <p>2 Q. Now, I'm going to circle back to what you just</p> <p>3 told me, but I want to define a couple other</p> <p>4 things.</p> <p>5 A. Sure.</p> <p>6 Q. Is there something call bivariate ecological</p> <p>7 regression?</p> <p>8 A. Yes.</p> <p>9 Q. Is that what you did?</p> <p>10 A. No.</p> <p>11 Q. Okay. What's bivariate?</p> <p>12 A. Two variables. Well, in a sense I did that,</p> <p>13 yes. I did not include variables other than</p> <p>14 race, but I did not use just a single equation.</p> <p>15 Q. Okay. So is it fair to say that you compared</p> <p>16 the -- you used some data to look at the black</p> <p>17 vote and compared it to the non-black vote?</p> <p>18 A. That's exactly right.</p> <p>19 Q. You didn't try to break out any other groups?</p> <p>20 A. I did not, and you can't. Because I did look</p> <p>21 at the turnout with respect to blacks, whites</p> <p>22 and others in these districts, and the turnout</p> <p>23 of others is so small that you cannot</p> <p>24 separately break it out. It's a very minimal</p> <p>25 component of any of these districts.</p> <p style="text-align: right;">61</p>	<p>1 the turnout.</p> <p>2 The two equation method would look at</p> <p>3 the percentage of the candidates as a</p> <p>4 percentage of the turnout.</p> <p>5 Q. Okay.</p> <p>6 A. And do it separately for each candidate.</p> <p>7 Q. All right. So you look at the race of the</p> <p>8 voters in each precinct and the vote in each</p> <p>9 precinct?</p> <p>10 A. Correct.</p> <p>11 Q. How did you determine the race of the voters in</p> <p>12 each precinct? Where did you get that data?</p> <p>13 A. The state, as I said, compiles data on the</p> <p>14 racial composition of the electorate, and I</p> <p>15 received that data from counsel.</p> <p>16 Q. Do you know where they got it from?</p> <p>17 A. I don't exactly, but I presume they got it from</p> <p>18 state sources. That is certainly my</p> <p>19 understanding.</p> <p>20 Q. Dr. Lichtman, I'm going to mark a couple of</p> <p>21 exhibits. We will reference these.</p> <p>22 (WHEREUPON, Defendants' Exhibits 4 and</p> <p>23 5 were marked for identification.)</p> <p>24 BY MR. FARR:</p> <p>25 Q. All right. So, Dr. Lichtman, I think we asked</p> <p style="text-align: right;">63</p>
<p>1 Q. Is that true in all the districts or just some</p> <p>2 of them?</p> <p>3 A. I believe it's true in virtually all of them.</p> <p>4 Q. All right. So how -- what data did you rely</p> <p>5 upon and where did you get it? Let's first</p> <p>6 talk about the race data. Have we covered that</p> <p>7 already?</p> <p>8 A. I think we've covered that already. In</p> <p>9 North Carolina, we have breakdowns by race.</p> <p>10 Q. Okay. And then how did you -- as I understand</p> <p>11 it, you looked at -- I could be completely</p> <p>12 wrong, but my understanding is when you do</p> <p>13 this, you can end up with a graph that's got</p> <p>14 race on one side and vote in the precinct on</p> <p>15 the other side. Is that fair to say?</p> <p>16 A. That's not exactly how I did it, but you can</p> <p>17 roughly portray it that way. As I said, I did</p> <p>18 not use a single equation. I used the two</p> <p>19 equation methodology which I am one of the</p> <p>20 developers of.</p> <p>21 Q. How is that different than what you have</p> <p>22 described as the single equation?</p> <p>23 A. The single equation would simply look at the</p> <p>24 percentage of the vote for each candidate as a</p> <p>25 percentage of the vote, not as a percentage of</p> <p style="text-align: right;">62</p>	<p>1 that you produce the data that you've used in</p> <p>2 preparing this report.</p> <p>3 A. Yes.</p> <p>4 Q. And as far as I know, Exhibit 4 and Exhibit 5</p> <p>5 are what we received?</p> <p>6 A. I don't know, but if you say so.</p> <p>7 Q. The racial data that you used to prepare</p> <p>8 Table 1 -- so the racial data by precincts that</p> <p>9 you used to make your report, is that in one of</p> <p>10 these two exhibits, 4 or 5?</p> <p>11 A. I don't know. I have not reviewed these</p> <p>12 exhibits. I can't say.</p> <p>13 Q. Can you take your time to look and see if you</p> <p>14 can tell me. I just want to know what the</p> <p>15 racial --</p> <p>16 A. I can't necessarily tell you because this would</p> <p>17 have been put into my computer, and so I don't</p> <p>18 exact -- this doesn't look exactly like what's</p> <p>19 in my computer. And without taking the time to</p> <p>20 go to my computer and compare it, I can't just</p> <p>21 verify this based on what you've handed me.</p> <p>22 Q. Okay. Whatever the racial data was that you</p> <p>23 received, did you personally make the</p> <p>24 calculations that led to your conclusions or</p> <p>25 did you have someone else do that for you?</p> <p style="text-align: right;">64</p>

<p>1 A. I did that. I didn't prepare the racial data, 2 but once I got it, I did the ecological 3 regression analysis. 4 Q. So the racial data you got from your counsel 5 and then you actually did all the mathematical 6 calculations yourself? 7 A. Correct. 8 Q. You didn't -- I remember in the other case you 9 had some guy that helped you. Did you use him 10 in this case? 11 A. No. 12 Q. Okay. What did your -- what did you do to 13 account for racial information by precincts for 14 split precincts? 15 A. Typically when you have split precincts, you 16 allocate the racial data according to the 17 percentages of the precincts that are put in 18 the split precinct. 19 Q. Okay. So let me see if I understand that. If 20 there was a precinct that was split that was, 21 say, 30 percent -- the whole precinct was 22 30 percent black, would you assume that the 23 part that was put into the ability-to-elect 24 district was 30 percent black or would you 25 determine if it was a higher percentage?</p> <p style="text-align: right;">65</p>	<p>1 ability-to-elect districts in 2003, that if 2 that district included a split precinct that 3 the counties thereafter made a new precinct 4 just based upon the part that was put in the 5 ability-to-elect district? 6 A. I'm not sure I understand your question. 7 Q. That's because I don't understand your answer. 8 So let me try again. 9 A. So you have a precinct that previously existed. 10 Is that what you're saying? 11 Q. Yes. 12 A. And that precinct is split -- 13 Q. Right. 14 A. -- in the new redistricting plan. 15 Q. Part of it, in 2003, went into the 16 ability-to-elect district, part of it did not. 17 What I want to know is how did you account for 18 the percentage of black population that was put 19 into the ability-to-elect district. 20 A. I did not do an analysis which compared 21 previous precincts prior to the 2003 22 districting plan to how those precincts were 23 allocated in the post 2003. 24 I simply analyzed the precincts that 25 existed already in the post 2003 plans.</p> <p style="text-align: right;">67</p>
<p>1 A. I am not certain whether they simply did 2 proportional allocation or went to a lower 3 level to determine it or it is more likely that 4 once the precinct was established as a new 5 precinct, you could then estimate directly for 6 that precinct the racial composition. 7 Q. But do you know how the racial data you used 8 accounted for split precincts and what the 9 racial percentage was of the part of the 10 population that was in the ability-to-elect 11 district? 12 A. Well, as I said, if it was split, you would 13 have a new precinct and you could base your 14 racial data upon that new precinct. 15 Q. Okay. 16 A. It wouldn't have to be based upon previous 17 precincts that went into it. 18 Q. So you think that when they enacted the 2011 19 districts and they split precincts, the result 20 of that was they created a new precinct with 21 the 2011 House districts? 22 A. I didn't analyze 2011 House districts so I 23 can't speak to that. 24 Q. Okay. Are you saying that in the 2003 25 districts, when they created the</p> <p style="text-align: right;">66</p>	<p>1 Q. Okay, but, Dr. Lichtman, do you know whether 2 some of these House districts were based upon 3 split precincts? 4 A. I don't. I didn't study that. 5 Q. Okay. So if it was based upon a split 6 precinct, then you don't know how the black 7 population was allocated in the data that you 8 received since you didn't -- 9 A. Now you're asking me a different question. 10 Q. I thought it was the same. 11 A. No. You're asking me how they allocated a 12 split precinct in a redistricting plan as 13 opposed to the precincts that existed within a 14 plan and what the populations were within that 15 new precinct. 16 Q. Okay. Let me try this again. 17 A. Sure. 18 Q. Do you know whether any of the House districts 19 were based upon split precincts? 20 A. No. I did not analyze that. 21 Q. So if they were based on split precincts, you 22 don't know how the race was allocated to the 23 ability-to-elect district? 24 A. I don't know how the redistricters allocated 25 their race.</p> <p style="text-align: right;">68</p>

<p>1 Q. Well, you also don't know the exact percentage 2 of black population in a district -- black 3 voting age population in a district that is 4 based upon a split precinct. 5 A. I was provided the black voting age population 6 in all existing precincts within the new 7 districts. That's all I can tell you. 8 I did not study the transition from one 9 district to another. 10 Q. Okay. That's not what I'm asking. 11 A. Okay. I don't know what you're asking. 12 Q. Let me try again. Do you know whether some of 13 these -- you calm down too. Okay. 14 Some of these House districts you know 15 whether they're based upon divided precincts. 16 A. Define what you mean by a divided precinct. A 17 previous precinct that was divided or an 18 existing precinct that was split? 19 Q. No. No. No. We have precincts. 20 A. Right. 21 Q. And when they drew the maps, they divided one 22 precinct, Precinct A. Part of it was put in 23 House District 5 and part of it was put in 24 another district. 25 A. Absolutely possible.</p> <p style="text-align: right;">69</p>	<p>1 MS. EARLS: If I can just let the 2 record reflect, my review of Exhibit 4 includes 3 material that I don't believe was provided in 4 connection with this litigation because it has 5 information about non-driver's license IDs and 6 it doesn't include information that I'm fairly 7 certain we did produce. So I just want the 8 record -- 9 MR. FARR: Okay. Thanks, Anita. That 10 could be my fault. 11 MS. EARLS: I don't think this reflects 12 all the material that we provided. 13 MR. FARR: When we have a lunch break, 14 I will go get exactly what was sent to me. 15 BY MR. FARR: 16 Q. Is there -- is there anything in here that was 17 used in this case, in Exhibit 4? 18 MS. EARLS: I can't -- looking at this, 19 I don't recognize this as being what we 20 produced in connection with this analysis. 21 BY MR. FARR: 22 Q. Okay. 23 A. I don't recognize it either. So what can I 24 tell you. 25 Q. Well, I apologize if I got that confused.</p> <p style="text-align: right;">71</p>
<p>1 Q. Okay. Do you know whether -- how did the 2 information that you received on the black VAP 3 per precinct deal with the split precinct? How 4 was the black population allocated to House 5 District 5 versus the other district? 6 A. I don't know how -- when they drew the plan, 7 the population was allocated from one district 8 to another. 9 Q. Okay. I think I'll move on to something else. 10 Did you -- let's talk about the vote 11 per precinct. 12 A. Okay. 13 Q. How did -- what information did you rely upon 14 for that? 15 A. Information provided to me. 16 Q. By your counsel? 17 A. Yes. 18 Q. Is that in any of the documents that -- 19 Exhibits 4 or 5? 20 A. I can't tell. It might well be, but just 21 looking at these documents as you've given them 22 to me, I can't tell. 23 Q. What was reported to you for the votes per 24 precinct? 25 A. The votes per precinct for each candidate.</p> <p style="text-align: right;">70</p>	<p>1 Somebody gave that to me, and you can see my 2 little yellow sticky that was given to me by my 3 paralegal that says Lichtman backup data. 4 All right. Now, Dr. Lichtman, I don't 5 right now have what was given to you to show 6 the votes per precinct. I'll go look later in 7 my e-mail to see if I have that. 8 A. Fair enough. 9 Q. Do you know how the information that you relied 10 upon dealt with absentee ballots? 11 A. As far as I understand, I was provided the sum 12 total of the votes which would include absentee 13 ballots. 14 Q. Sum total of the votes? 15 A. For each candidate in each precinct and the 16 racial composition of each precinct as it 17 existed after the 2003 redistricting, which, of 18 course, can be determined at the block level. 19 That's why this whole confusion about the 20 transition as opposed to what these precincts, 21 as they existed, what their racial composition 22 was. 23 Q. I'll ask questions about precincts in a second, 24 but my question to you is: Do you know if 25 county boards of elections in North Carolina</p> <p style="text-align: right;">72</p>

<p>1 always allocate the absentee ballot vote back 2 to their precinct totals? 3 A. They may not. 4 Q. If they don't, could that have an impact on 5 your analysis? 6 A. Probably not. 7 Q. Okay. What about early vote -- early voting in 8 North Carolina -- and you know a lot about 9 that. 10 A. I do. 11 Q. You realize that's treated as an absentee 12 ballot in North Carolina. 13 A. Yes. 14 Q. Do you know whether or not all county boards of 15 elections allocate the early vote back to the 16 precincts? 17 A. I don't for sure. 18 Q. Are African American voters more likely to use 19 early voting in North Carolina than whites? 20 A. Yes. 21 Q. If the county did not allocate early voting 22 back to the precinct, could that have an impact 23 on your study? 24 A. It might but not necessarily. Probably not. 25 Q. Even though -- I don't remember the</p> <p style="text-align: right;">73</p>	<p>1 Q. You're looking at Exhibit 5? 2 A. Yes. You can see all other votes are allocated 3 by precinct, one stop, election day, curbside, 4 provisional, et cetera. The only ones that 5 aren't allocated are a very tiny percentage of 6 absentee-by-mail votes. And if you go through 7 all of these elections in Exhibit 5, it's quite 8 clear that in every instance you do have the 9 votes allocated by precinct except for a very 10 small percentage of votes that were cast 11 absentee by mail. That's true of District 99, 12 District 101 and District 102 in this 13 Exhibit 5. 14 Q. Okay. Well, Dr. Lichtman, let's look at the 15 first page there of Exhibit 5. 16 A. Yes. 17 Q. How do you know that -- it says absentee by 18 mail. There's a category for that. Is there a 19 category for one-stop voting? 20 A. Absolutely. Look at Precinct 004. You can see 21 that there are 131 one stops, 471 election days 22 which add up to 602 total votes by precinct for 23 that precinct. And if you go down all of the 24 precincts, you can see precisely the same 25 allocation by precinct is made in the same sum</p> <p style="text-align: right;">75</p>
<p>1 percentages. Do I recall that like in 2008 -- 2 I don't know. The record speaks for itself, 3 but I'm recalling 40 or 50 percent of black 4 voters did early voting. 5 A. I don't recall the numbers, but -- 6 Q. Well, let's say it was 40 or 50 percent and -- 7 A. Just looking at these returns, the number of 8 ballots that were not allocated to precincts 9 are very, very small. 10 Q. Well, how do you know that? 11 A. It's right here. You can see election day and 12 one stop are allocated to precincts. 13 Q. Where is that? 14 A. Right on the first page of Exhibit 5. It's 15 right there. 16 So, yes, they are all allocated to 17 precincts. The only ones that aren't allocated 18 to precincts are a very small number of 19 absentee by mail. 20 If you look at this first one that you 21 handed me, there were 15,591 votes and only 261 22 absentee by mail. That's a tiny, tiny 23 percentage. And if you look at -- 24 Q. Let me find where that is first. 25 A. Okay.</p> <p style="text-align: right;">74</p>	<p>1 to get the total votes. 2 As I said, out of 15,591, only 261 are 3 not allocated by precinct, far too small to 4 have any impact whatsoever on the analysis. 5 Q. Okay. Now, this -- this exhibit, does it 6 include all of the races you studied? 7 A. No, but it certainly shows what the practice is 8 in allocating by precinct. And the same thing 9 is true of the Senate elections. You can see 10 the election day and one stop are all added 11 together as well. 12 Q. Well, they are in these elections, but you 13 don't -- this doesn't show what's been done in 14 the other elections. 15 A. No, but I did check to make sure that when I 16 got the data, counting absentees -- so, as you 17 can see, very small -- it added up to the 18 correct totals in the elections. That would 19 not have been true if they did not allocate the 20 one stop by precinct. 21 Q. Okay. We don't have the -- we don't have those 22 other sheets right now to confirm that that's 23 true. 24 A. I said I did that test myself -- 25 Q. Okay.</p> <p style="text-align: right;">76</p>

<p>1 A. -- to confirm that that was true.</p> <p>2 Q. All right. Now, what calculations did you</p> <p>3 perform to come up with your conclusions in the</p> <p>4 fourth and fifth columns of Table 1?</p> <p>5 A. Can we take a break.</p> <p>6 MR. FARR: Sure.</p> <p>7 (Brief Recess: 11:28 to 11:40 a.m.)</p> <p>8 BY MR. FARR:</p> <p>9 Q. Dr. Lichtman, on Exhibit 5, do you know how the</p> <p>10 county boards of elections allocated the</p> <p>11 curbside votes or the absentee by --</p> <p>12 A. Yeah. I think my eyes strayed to the wrong</p> <p>13 thing last time because I haven't looked at</p> <p>14 these in four years or don't recall them.</p> <p>15 I think the non-precinct allocations</p> <p>16 are on the far right, okay, and I see 432 by</p> <p>17 mail not allocated.</p> <p>18 Q. Where's that?</p> <p>19 A. The very far right on the bottom there, you see</p> <p>20 the number 432 and then there's 93 curbside.</p> <p>21 So that would be, in my head adding up, 525 and</p> <p>22 another 52. So that would be 607. And the</p> <p>23 total votes cast were 21,650. So those that</p> <p>24 were not allocated were much too small to have</p> <p>25 any impact whatsoever on the analysis relative</p> <p style="text-align: right;">77</p>	<p>1 about Table 1.</p> <p>2 A. Which exhibit are we on?</p> <p>3 Q. Exhibit 3. Looking at Table 1, can you</p> <p>4 determine which, if any, of these races you</p> <p>5 analyzed were uncontested?</p> <p>6 A. It says right there.</p> <p>7 Q. Where's that?</p> <p>8 A. All the ones that say none.</p> <p>9 Q. Okay. Where does it say none?</p> <p>10 A. Right in the table.</p> <p>11 Q. All right.</p> <p>12 A. If you look at Democratic primary 2008, if you</p> <p>13 go down to HD 12, it says none, HD 21 says</p> <p>14 none, unless you're looking at a different</p> <p>15 document.</p> <p>16 Q. No. I just didn't know what that meant.</p> <p>17 So if in the results columns you've got</p> <p>18 results for 2008 Democratic primary, 2008</p> <p>19 general election, 2010 Democratic primary, 2010</p> <p>20 general election, right?</p> <p>21 A. Correct.</p> <p>22 Q. But you've got the word none in any of those</p> <p>23 columns, then that means that the candidate had</p> <p>24 no opposition?</p> <p>25 A. Right. Exactly.</p> <p style="text-align: right;">79</p>
<p>1 to the total votes cast.</p> <p>2 Q. Okay. So you're saying that on the -- do you</p> <p>3 know what steps the county board took to decide</p> <p>4 what -- which number of curbside or absentee or</p> <p>5 one-stop votes they would allocate to the</p> <p>6 precinct? Do you know how they came up with</p> <p>7 those figures?</p> <p>8 A. As I read this -- and again, I don't recall</p> <p>9 this. I haven't looked at it in four years,</p> <p>10 but if you look carefully on the right column</p> <p>11 there, you can see none of the curbside were</p> <p>12 allocated by precinct. It's all zeros. You</p> <p>13 can see none of the provisionals were allocated</p> <p>14 by precinct. It's all zeros. And you can see</p> <p>15 none of the absentees were allocated by</p> <p>16 precinct. They're all zeros.</p> <p>17 So there was no discretionary decision</p> <p>18 that I can discern here for the small number of</p> <p>19 votes made by those who were responsible for</p> <p>20 reporting election results.</p> <p>21 Q. Okay. I'm going to see if I've got</p> <p>22 spreadsheets for the other elections. We'll</p> <p>23 look at those if we do.</p> <p>24 A. Okay.</p> <p>25 Q. Now, I wanted to ask you some more questions</p> <p style="text-align: right;">78</p>	<p>1 Q. Okay. Fair to say most of these races were</p> <p>2 uncontested?</p> <p>3 A. No. I can count. Let's see.</p> <p>4 Q. You don't need to do that. It speaks for</p> <p>5 itself.</p> <p>6 Fair to say that a lot of the races you</p> <p>7 looked at were uncontested?</p> <p>8 A. I don't know what you mean by a lot, but there</p> <p>9 were a number, yes.</p> <p>10 Q. If we're looking at a non-contested race, does</p> <p>11 that limit its utility for evaluating racially</p> <p>12 polarized voting?</p> <p>13 A. Yes, but it doesn't limit its utility for</p> <p>14 evaluating the district, which is the purpose</p> <p>15 here. The purpose here is not to evaluate</p> <p>16 racially polarized voting.</p> <p>17 You're getting things confused.</p> <p>18 Remember, I said racially polarized voting only</p> <p>19 becomes politically significant if in a</p> <p>20 particular district white bloc voting results</p> <p>21 in the inability of African Americans to elect</p> <p>22 an African American candidate or, in the rare</p> <p>23 case, a white candidate of choice.</p> <p>24 If in fact -- and the vast majority of</p> <p>25 these uncontested elections involve black</p> <p style="text-align: right;">80</p>

<p>1 candidates. If in fact no whites are even 2 contesting an African American candidate in a 3 district at a given level and many of them are 4 in below 50 percent districts, that is a very 5 powerful indication that this is a district 6 that provides African American voters the 7 ability to elect candidates of their choice. 8 If in fact it was a district where white voters 9 could elect candidates of their choice, you 10 would certainly expect white opposition to 11 black candidates. So that's a very strong 12 indicator of the ability to elect in these 13 districts. 14 Q. But if you have an uncontested race, that race 15 can't be used to assess the degree of racially 16 polarized voting in the district? 17 A. That's correct, but that's not the purpose of 18 this table -- 19 Q. I understand. I got that. 20 A. -- or the purpose of my analysis. 21 Q. Okay. Now, Dr. Lichtman, in your -- in one of 22 these reports you've done I think as it applied 23 to the Democratic primaries -- 24 A. As what? 25 Q. As it applied to the Democratic primaries, you</p> <p style="text-align: right;">81</p>	<p>1 example of the failure of a Democratic nominee 2 out of numerous elections -- not just House 3 elections but Senate and Congressional -- ever 4 being defeated in a general election. 5 So the issue of general elections is 6 overwhelmingly established that the critical 7 election is the primary. 8 Q. Okay. But in your three reports, you never 9 reported for a general election what percentage 10 of the actual voters were black? 11 A. No. I just reported the results for these 12 black candidates coming out of the general -- 13 the primary or any Democrats coming out of the 14 primary, and those results would take into 15 account every aspect of the election. 16 Q. But we don't know, for example, whether the 17 majority of the voters in the general election 18 were black? 19 A. No, it's not necessary to determine that to 20 assess whether in these districts African 21 Americans can elect candidates of their choice 22 because we already know who those candidates 23 are. 24 Q. All right. Turn to Table 2. Is this the same 25 analysis that you did for the House district</p> <p style="text-align: right;">83</p>
<p>1 looked at the actual percentage of the voters 2 who were black. 3 A. Yes. 4 Q. Okay. Did you do that for general elections 5 anywhere in your reports? 6 A. It was not necessary because in general 7 elections, once -- given that blacks control 8 the primaries, the issue in the general 9 election was can those candidates of choice of 10 the dominant African Americans in the primary 11 be elected in a general election. 12 And I looked at general election 13 results for a range of elections and saw it 14 wasn't close. Overwhelmingly in general 15 elections, regardless of the levels of 16 turnout -- and, of course, overall votes take 17 into account everything, turnout, black 18 cohesion, white bloc voting -- either nominee 19 of the Democratic party was overwhelmingly 20 elected. 21 Similarly here, as you can see in every 22 single general election, either the black 23 candidate coming out of the primary or the 24 white candidate of choice coming out of the 25 primary was elected. There's not a single</p> <p style="text-align: right;">82</p>	<p>1 except for the 2003 Senate districts? 2 A. Correct. 3 Q. Is there anything different about this than 4 what you did with the House districts? 5 A. No. The only difference is there were no 6 50 percent plus Senate districts. That's not a 7 difference in the analysis or the format of the 8 table. 9 Q. There was no 50 percent plus any part black 10 voting age population district in the 2003 11 districts? 12 A. That's right. 13 Q. Did you see what the black percentage of 14 registered voters were in any of these 15 districts? 16 A. I did later -- not in this report but later on 17 in terms of assessing the black voters in the 18 critical Democratic primaries because these 19 districts, like the House districts, both based 20 on this analysis and my subsequent analysis, 21 the critical election is the primary. Once the 22 primary is selected, the Democratic candidate 23 wins overwhelmingly in these districts. 24 Based upon my subsequent analysis and 25 based upon this analysis, there's also a</p> <p style="text-align: right;">84</p>

<p>1 hundred percent win rate for the Democratic 2 nominees in all of these Senate districts, just 3 as there were in all the House districts. 4 Q. So the answer is you didn't look to see whether 5 in the district at large blacks were a majority 6 of the registered voters? 7 A. Only for Democrats. 8 Q. Right. 9 A. Correct. 10 Q. Not for the entire district? 11 A. Right. Not necessary. 12 Q. All right. Let's turn to Table 4. What was 13 the purpose of Table 4? What is Table 4? 14 A. Just to look at the extent to which you had a 15 benchmark as compared to the -- let me look at 16 that again. As -- I think at this time it was 17 just proposed districts. I don't recall what 18 the status of the plans were four years ago 19 when I did this report. Just to show that 20 there were more 30 percent plus districts in 21 the benchmark. 22 And remember, I said that, you know, in 23 my view, based upon all my analysis, 40 percent 24 plus districts would be sufficient to give 25 African Americans the ability to elect</p> <p style="text-align: right;">85</p>	<p>1 A. Right, which clearly rounds to 40 by one 2 one-hundredth of a percentage point. 3 Q. Right. And the reason why I got confused on 4 21, Dr. Lichtman, is because you've got a 5 column that says count. You see House 6 District 29 on the count is listed as 21. 7 A. Oh, that's just a count of the numbers. That's 8 why you got confused. 9 Q. It is. Okay. 10 A. And that district was also -- when it was 11 created was 44.7 percent in House District 29. 12 Q. So now I want to talk about Table 4 for a 13 second. 14 A. Okay. 15 Q. I want to understand what this is. You've got 16 your count column on the left and then you've 17 got existing district. Is that referring to 18 the 2003 House districts? 19 A. Yes. 20 Q. And in making this chart, did you determine 21 whether those districts were still legal 22 districts as it related to population deviation 23 under the 2010 census? 24 A. No. 25 Q. Did you check to see whether they were legal</p> <p style="text-align: right;">87</p>
<p>1 candidates of their choice. That did not mean 2 that was a generalized statement for the state. 3 That did not mean that African Americans could 4 not elect candidates of their choice below 5 40 percent in particular areas of the state. 6 And in fact, my report showed that in some 7 areas of the state African Americans were able 8 to elect candidates of their choice below 9 40 percent. 10 Q. Okay. Now, I want to ask you a question about 11 House District 21 to start off. 12 A. Okay. 13 Q. Flip back to Table 1 for a second. 14 A. Okay. 15 Q. You treated House District 29 as -- 16 A. 21 I think you said. 17 Q. No. I want to ask about 29. I'm pretty sure 18 that's in Durham County. You treated that 19 district as a 40 percent plus district in 20 Table 1. 21 A. Yes. 22 Q. And so Table 4, if you'll go back to that, 23 you've got the percentage black VAP under the 24 2010 census for House District 29 as 25 39.99 percent.</p> <p style="text-align: right;">86</p>	<p>1 districts as it related to any state 2 constitutional criteria for drawing districts? 3 A. You're talking about post 2010 census in both 4 of those questions? 5 Q. Yes. 6 A. No. 7 Q. Looking at -- starting with count 2, down to 8 count 32, you've got -- starting with -- it's 9 House District 100 down to House District 59. 10 Do you see where I'm referring? 11 A. No. I'm sorry. Which column are you looking 12 at? 13 Q. I'm looking at existing districts -- I'm 14 looking all the districts below House 15 District 29. 16 A. Okay. I'm there. 17 Q. All right. The black VAP for the districts in 18 this chart is the any part black voting age 19 population under the 2010 census? 20 A. Yes. 21 Q. Now, starting with your count 22 down to 32, 22 did you look at the election history for any of 23 those districts? 24 A. I think I did, and it's in one of my reports 25 somewhere showing that in some of these</p> <p style="text-align: right;">88</p>

<p>1 districts actually did elect African Americans 2 which is why, to be completely clear, because 3 we've gotten some confusion on your questions, 4 when I said 40 percent plus was needed to 5 create opportunity districts, I meant that kind 6 of as a generic issue. That does not mean that 7 you could not create African American districts 8 below 40 percent in particular areas, based 9 upon a particularized analysis of those areas 10 that would give African Americans an ability to 11 elect candidates of their choice. I did not 12 mean 40 percent to be an absolute cutoff for 13 the creation of districts.</p> <p>14 Q. Okay. Do you recall right now which of those 15 districts in which an African American had been 16 elected?</p> <p>17 A. Let me see. As you know, this was done four 18 years ago. Might be in my next report.</p> <p>19 Q. Let me hand you that because I think it is. 20 (WHEREUPON, Defendants' Exhibit 6 was 21 marked for identification.) 22 THE WITNESS: Senate District 5, 23 31 percent African American, elected an African 24 American candidate of choice 25 BY MR. FARR:</p> <p style="text-align: right;">89</p>	<p>1 those elections?</p> <p>2 A. I don't recall. As I said, it's four years 3 ago.</p> <p>4 Q. What do you know about how much money each 5 candidate spent?</p> <p>6 A. I don't know, and that's part of my point, you 7 know.</p> <p>8 Q. Did you look at that for any of these 9 elections?</p> <p>10 A. No, I did not. Just looked at outcomes of 11 elections. And regardless of the political 12 circumstances -- and there's lots of different 13 political circumstances in 40 percent plus 14 districts -- African American candidates or, in 15 the rare instance, white candidates of choice 16 of African Americans almost always win 17 regardless of particular circumstances in, you 18 know, numerous districts.</p> <p>19 And here we saw that even in a 20 31 percent it's possible for an African 21 American candidate of choice. And the reason 22 is despite extreme racial polarization, what 23 you had here was much higher African American 24 cohesion behind the African American candidate 25 than you had white bloc voting behind the</p> <p style="text-align: right;">91</p>
<p>1 Q. You're looking at Exhibit 6. You're looking at 2 Paragraph 17?</p> <p>3 A. Yes.</p> <p>4 Q. And do you recall that candidate of choice was 5 defeated in the 2010 election?</p> <p>6 A. I don't recall, but let me see if I said that. 7 That is correct. So he won in the good 8 Democratic year but lost in the good Republican 9 year. So depending on political circumstance, 10 African Americans have at least some 11 opportunity to elect a candidate of their 12 choice even in a district that's 31 percent 13 African American VAP.</p> <p>14 I'm not saying they're always going to 15 win such a district, but they have -- clearly 16 have some opportunity there, which is why I 17 said you can even -- depending upon the 18 particularized area of the state and 19 particularized analysis, while 40 percent is a 20 general guideline, it's not a talismanic 21 absolute line in every district that you might 22 create.</p> <p>23 Q. Okay. Let me ask you about Senate District 5 24 since we got on that. What do you know about 25 the margins of victory for the candidates in</p> <p style="text-align: right;">90</p>	<p>1 non-African American candidate, that is, the 2 African American candidate got 97 percent of 3 the vote but also 30 percent of the white vote.</p> <p>4 And that is not atypical in 5 North Carolina. If you look at the exit polls, 6 you see African American candidates get votes 7 in the 90 or 90 percent plus range and 8 crossover voting in the 30 or 30 percent plus 9 range is not unusual.</p> <p>10 Q. Did you look to see what percentage of the 11 electorate African Americans were in the 2008 12 general election or the 2010 general election 13 for Senate District 5?</p> <p>14 A. No, but whatever percentage they were in the 15 2008, given the patterns of polarized voting, 16 it was sufficient for the African American 17 candidate of choice to win.</p> <p>18 Q. Right, but that could have been because the 19 black turnout was higher as a percentage of VAP 20 or registered voters than the white turnout; is 21 that true?</p> <p>22 A. Well, we can work that out. Let's see, I think 23 I have a calculator. So let's assume that 24 isn't the case and we'll see if that's 25 necessary to be the case.</p> <p style="text-align: right;">92</p>

<p>1 So say it's 31 percent African 2 American. They get 97 percent of the African 3 American vote. That's 30 percent of the vote. 4 70 percent -- 69 percent, excuse me, white make 5 it 30 percent of that vote. Then we add it 6 together. 50.8. 7 So it was not necessary for African 8 Americans to exceed the 31 percent of the VAP. 9 Q. Well, I didn't ask you if it was necessary. 10 I said did you examine whether the 11 African American turnout was higher as a 12 percentage of the VAP or registered voters in 13 Senate District 5 as compared to white turnout 14 in 2008. 15 A. No. I simply looked at the actual results of 16 the election which take into account 17 everything, turnout, cohesion and crossover, 18 and we just did that little exercise showing it 19 wasn't necessary for African Americans to 20 turnout even above the 31 percent level to win 21 in that district. 22 Q. Okay. I didn't ask you if it was necessary. 23 A. I'm sorry. I thought you did. 24 Q. I asked you do you know what the percentage or 25 did you study the percentage of the African</p> <p style="text-align: right;">93</p>	<p>1 So it wasn't necessary to parse that 2 out to reach the conclusion that if African 3 Americans could nominate a candidate of their 4 choice, it is about as certain as you can get 5 in politics -- and nothing in politics is a 6 hundred percent certain, but it's about as 7 certain as you can get in politics that that 8 candidate is going to prevail in the general 9 election. 10 Q. Okay. Is there any -- in looking at the 11 Democratic primary, does it make a difference 12 what type of white voters were in the district, 13 whether they're Republican voters or all 14 Democrat white voters? 15 A. Well, that would be taken into account when I 16 did the analysis of the share of the Democratic 17 primary electorate that was black. In other 18 words, the reason you get much higher 19 Democratic black percentages than the black VAP 20 in the district is blacks are overwhelmingly 21 Democratic whereas whites usually are 22 Republican. 23 Even if whites were split between 24 Republicans and Democrats, you would still get 25 a much higher African American share of the</p> <p style="text-align: right;">95</p>
<p>1 American turnout as a percentage of VAP or 2 registered voters as compared to white turnout. 3 A. No, it's not necessary. 4 Q. Okay, it's not necessary, but you didn't study 5 it? 6 A. We can chase that tail all you want. That's 7 right. 8 Q. And you didn't -- you didn't study those type 9 of turnout figures for any of these elections? 10 A. Turnout would have been taken into account in 11 the actual results, but I did look at turnout 12 later in my subsequent report, yes. 13 Q. For the Democratic primary? 14 A. Yes, the critical elections in these districts. 15 Q. But you didn't look at the percentage of black 16 turnout by VAP or registration and compare that 17 to the percentage of white turnout by VAP or 18 registration in any of the general elections? 19 A. That's right because African Americans or 20 African American candidates of their choice 21 prevailed 100 percent of the time in general 22 elections. And when you looked at 23 reconstituted elections for statewide 24 Democratic candidates, the results were 25 overwhelming.</p> <p style="text-align: right;">94</p>	<p>1 Democratic primary electorate. 2 So it certainly can make a difference, 3 the degree of Republican loyalty of whites in 4 the district, but that is taken into account in 5 my results. In other words, my results 6 indicate the African American share of the 7 Democratic primary turnout, which is a result 8 both of African American affiliation with the 9 Democrats and non-African American affiliation 10 with Democrats. So all of that is taken into 11 account because we precisely know what the 12 African American share of the Democratic 13 primary electorate was. 14 Q. Okay. Dr. Lichtman, do you know whether the 15 primaries in North Carolina are closed? 16 A. Pardon me? 17 Q. Do you know if the primaries are closed? 18 A. I'm not sure. That may vary from election to 19 election. 20 Q. You don't know, like are Republicans able to 21 vote in the Democratic primary in 22 North Carolina? 23 A. I'm not certain, but that would be taken into 24 account as well in all of these turnout 25 numbers.</p> <p style="text-align: right;">96</p>

<p>1 Q. All right. Well, let's assume for a second 2 that the primaries are closed, that Republicans 3 can't vote in a Democratic primary. Would 4 there be a correlation between the number of 5 white Republicans that you put in one of these 6 40 percent plus districts and the percentage of 7 black population that you could kind of drop 8 down to in order to make sure that the black 9 Democrats would control the Democratic primary? 10 A. You don't need to do that because in 11 North Carolina we can directly, rather 12 indirectly through estimation, we can directly 13 assess in any district you want the African 14 American component of the Democratic primary 15 irrespective of whether it's open, closed, 16 partly open, partly closed. We know what the 17 turnout is in all of these primaries in all of 18 these elections. 19 Q. So you don't think it would make a difference 20 at all whether you -- if the state wanted to 21 create an ability-to-elect district at less 22 than 50 percent, it wouldn't have any 23 significance whether or not the state put in 24 additional Republican white voters or 25 additional Democrat white voters?</p> <p style="text-align: right;">97</p>	<p>1 districts over registered white Democrats. 2 A. Do you want me to read this aloud or read this 3 to myself? 4 Q. No. Just read it to yourself. 5 A. The paragraph started "Realizing"? 6 Q. Yes. I just want to ask you about that. 7 A. Okay. I read it quickly. I don't want to take 8 a lot of your time. 9 Q. I don't want to take any more of your time than 10 is necessary, too, Dr. Lichtman. And, again, I 11 apologize for not having all the documents I 12 should have had. 13 A. That's okay. You can ask me questions about 14 this. I think I've got the gist of it. 15 Q. So in 2002, did the state indicate that in 16 order to create effective minority districts 17 that were under 50 percent, that they thought 18 it was important to add white registered 19 Republicans to those districts instead of white 20 registered Democrats? 21 A. I see that. 22 Q. So that was something that the state concluded 23 in 2002? 24 A. That's what they said. 25 Q. Okay. And this was for House districts, right?</p> <p style="text-align: right;">99</p>
<p>1 A. I didn't say that wouldn't make a difference. 2 What I did say was you don't need to 3 use that to provide a rough estimate of what 4 you would expect the Democratic primary turnout 5 to be in terms of its African American 6 component. You can directly measure that in 7 North Carolina, unlike most other states, 8 because people register by race. So you know 9 what the African American component is of your 10 Democratic primary electorate in any given 11 district that you draw. 12 Q. All right. Can we mark this as the next 13 exhibit. 14 (WHEREUPON, Defendants' Exhibit 7 was 15 marked for identification.) 16 BY MR. FARR: 17 Q. Dr. Lichtman, you can read this, obviously, but 18 I'm going to represent to you that this is the 19 Section 5 submission that the State of 20 North Carolina made in support of legislative 21 districts in 2002. 22 A. Okay. I've not seen this. 23 Q. Okay. I want you to read the paragraph that 24 starts on Page 2 about the state's decision to 25 place registered Republicans in minority</p> <p style="text-align: right;">98</p>	<p>1 A. Yes, but they also said you had to have a 2 delicate balance between putting too many white 3 Republicans in which could jeopardize general 4 elections. 5 So what they said what you wanted to 6 have was blacks being able to control the 7 primaries in the Democratic primaries and then 8 able to win general elections. And that's 9 exactly what you had in these districts that 10 were 40 percent or more African American. You 11 had blacks controlling the primaries and more 12 than sufficient Democratic votes for 100 13 percent win rates. 14 Q. But it's true the state said in these 15 40 percent plus districts there were under 16 50 percent and it was important in some 17 instances to add population to get the district 18 up to the appropriate deviation level by using 19 white Republicans who could not vote in the 20 Democratic primary. Is that fair to say? 21 A. I don't see anything about deviations here so 22 you'll have to point me to that. You're 23 talking about to achieve population equality. 24 Is that what you mean? 25 Q. Yes.</p> <p style="text-align: right;">100</p>

<p>1 A. Yes, that's what they said.</p> <p>2 Q. Okay. All right.</p> <p>3 A. And as I said, also, you can directly measure</p> <p>4 both voting strengths of African Americans in</p> <p>5 primaries and directly measure general election</p> <p>6 results.</p> <p>7 MR. FARR: How about handing him the</p> <p>8 next exhibit which is Exhibit 8.</p> <p>9 (WHEREUPON, Defendants' Exhibit 8 was</p> <p>10 marked for identification.)</p> <p>11 BY MR. FARR:</p> <p>12 Q. Do you have Exhibit 8, Dr. Lichtman?</p> <p>13 A. Yes.</p> <p>14 Q. I'll represent to you this is a pre-clearance</p> <p>15 submission by the state in -- given to the</p> <p>16 Justice Department in 2002. Could you turn to</p> <p>17 Page 2.</p> <p>18 A. Yes.</p> <p>19 Q. Just to make the same point but a little more</p> <p>20 clearly, can you read into the record the first</p> <p>21 full paragraph on Page 2.</p> <p>22 A. Do you want me to read that whole paragraph?</p> <p>23 Q. Just to get it in the record.</p> <p>24 A. "Realizing that the changed</p> <p>25 demographics would make it difficult to</p> <p style="text-align: right;">101</p>	<p>1 did not jeopardize the chances of black</p> <p>2 Democratic nominees in the general</p> <p>3 election.</p> <p>4 "See chart at Attachment S-27 C-3,</p> <p>5 which contains black percentages of</p> <p>6 Democratic voter registration, the</p> <p>7 success of Democratic nominees regardless</p> <p>8 of race, and an explanation of voting in</p> <p>9 North Carolina party primaries."</p> <p>10 Q. So would you agree that this Exhibit 8 shows</p> <p>11 the construction of Senate districts in 2002</p> <p>12 the state determined that in order to maintain</p> <p>13 these ability-to-elect districts that were</p> <p>14 under 50 percent but above 40 percent level, it</p> <p>15 was important to add in some instances</p> <p>16 Republican precincts over white Democratic</p> <p>17 precincts?</p> <p>18 A. That's what they said, but I don't see the</p> <p>19 40 percent level here.</p> <p>20 Q. Well, there was no -- in the 2000 era Senate</p> <p>21 districts, were there any Senate districts that</p> <p>22 were created by the state with a black VAP</p> <p>23 above 50 percent?</p> <p>24 A. No, but this may have been under 40 percent</p> <p>25 too. I don't know what they're referring to</p> <p style="text-align: right;">103</p>
<p>1 maintain the same percentages of black</p> <p>2 population in every minority district,</p> <p>3 the co-chairs sought to preserve black</p> <p>4 voting strength in Section 5 areas by</p> <p>5 paying close attention to two things:</p> <p>6 the black percentage of the Democratic</p> <p>7 primary electorate and the success of</p> <p>8 Democratic nominees in general elections</p> <p>9 regardless of race.</p> <p>10 "Where adding white population was</p> <p>11 unavoidable to achieve population</p> <p>12 equality in a district, the co-chairs</p> <p>13 sought to add precincts with large</p> <p>14 numbers of white registered Republicans</p> <p>15 over precincts with large numbers of</p> <p>16 white registered Democrats.</p> <p>17 "Under North Carolina law,</p> <p>18 registered Republicans cannot vote in</p> <p>19 Democratic primaries. Thus, a white</p> <p>20 Republican precinct would do less damage</p> <p>21 to black voting strength in a Democratic</p> <p>22 primary than would a white Democratic</p> <p>23 precinct. The co-chairs therefore added</p> <p>24 white Republican precincts to black</p> <p>25 districts, to the extent that doing so</p> <p style="text-align: right;">102</p>	<p>1 here. Remember, I said it might be possible in</p> <p>2 particular parts of the state to create</p> <p>3 opportunity districts under 40 percent.</p> <p>4 Q. Dr. Lichtman, I want to go back to Table 4 of</p> <p>5 Exhibit 1 and compare it to the districts where</p> <p>6 you say -- where you talk --</p> <p>7 A. Table 4.</p> <p>8 Q. Exhibit 1.</p> <p>9 A. Wait a minute. Wait a minute. Wait a minute.</p> <p>10 I've got a lot of exhibits in front of me.</p> <p>11 Q. Okay. Take your time.</p> <p>12 A. Exhibit 1 I don't see. Here it is buried.</p> <p>13 Okay. Table 4?</p> <p>14 Q. Yes.</p> <p>15 A. I don't see a Table 4.</p> <p>16 Q. I'm sorry, Dr. Lichtman. I'm confusing you.</p> <p>17 It's not Exhibit 1. It's Exhibit 3. It's your</p> <p>18 first report.</p> <p>19 A. Thank you.</p> <p>20 Q. My apologies.</p> <p>21 A. No problem. I see it.</p> <p>22 Q. So we're on Table 1 in Exhibit 3, and we were</p> <p>23 looking at your second affidavit which you had</p> <p>24 a list of the districts that African Americans</p> <p>25 had won where the population was under 40</p> <p style="text-align: right;">104</p>

<p>1 percent, and I think that started on Page 10.</p> <p>2 A. Which exhibit are we talking about here?</p> <p>3 Q. That would be Exhibit 6.</p> <p>4 A. What page are we on?</p> <p>5 Q. Well, just to answer this question, if you</p> <p>6 would just kind of like review Pages 10 and 11</p> <p>7 and 12. You don't have to read it into the</p> <p>8 record for right now.</p> <p>9 A. I'm there.</p> <p>10 Q. And I want to make sure -- I may have confused</p> <p>11 you again. I wanted -- in Exhibit 3, I wanted</p> <p>12 to look at Table 4. I want to compare what's</p> <p>13 in your Exhibit 6 to Table 4. You got that?</p> <p>14 A. Yes.</p> <p>15 Q. All right. Now, if you go to the bottom of</p> <p>16 Table 4, you've got 1, 2, 3, 4, 5, 6, 7, 8, 9,</p> <p>17 10, 11 -- you've got 11 districts listed that</p> <p>18 have a black VAP under the 2010 census of under</p> <p>19 40 percent.</p> <p>20 A. How many did you say?</p> <p>21 Q. Well, starting with District 100 --</p> <p>22 A. Okay.</p> <p>23 Q. -- you've got 11 there, right?</p> <p>24 A. Correct.</p> <p>25 Q. Now, isn't it fair to say that out of those 11</p> <p style="text-align: right;">105</p>	<p>1 than House District 39, have been white</p> <p>2 Democrats?</p> <p>3 A. That wouldn't surprise me at all, and so</p> <p>4 they're probably candidates of choice of</p> <p>5 African Americans --</p> <p>6 Q. Okay.</p> <p>7 A. -- even though they're not black. So that</p> <p>8 would establish that.</p> <p>9 Q. Okay. So is it fair to say that the plan that</p> <p>10 creates districts -- more districts with</p> <p>11 population that are between -- black population</p> <p>12 between 30 percent black VAP and 37.9 percent</p> <p>13 black VAP is going to result in the election of</p> <p>14 more Democrats in North Carolina?</p> <p>15 A. That is correct because districts with</p> <p>16 substantial concentrations of blacks do tend to</p> <p>17 be more Democratic given polarized voting</p> <p>18 patterns than districts with minimal</p> <p>19 concentrations. It is not a universal pattern,</p> <p>20 however. There districts with very small</p> <p>21 concentrations of black that are also heavily</p> <p>22 Democratic.</p> <p>23 Q. So creating a redistricting plan with a larger</p> <p>24 number of districts between 30 percent black</p> <p>25 VAP and 37.39 percent black VAP would be more</p> <p style="text-align: right;">107</p>
<p>1 districts, the only one that you report as</p> <p>2 having been won by an African American is House</p> <p>3 District 39?</p> <p>4 A. That's correct.</p> <p>5 Q. I'll ask you about House District 39 in a</p> <p>6 second, but as to the other districts, did you</p> <p>7 study who had won those elections?</p> <p>8 A. I did not. I just looked to see which of these</p> <p>9 districts elected an African American to show</p> <p>10 that it might be possible, given voting</p> <p>11 patterns in particular parts of the state, to</p> <p>12 create districts that give African Americans an</p> <p>13 opportunity to elect an African American</p> <p>14 candidate even below the 40 percent general</p> <p>15 guideline for the state.</p> <p>16 Q. Did you ever look for any elections in</p> <p>17 districts that were under 40 percent black VAP</p> <p>18 where the black candidate lost the election?</p> <p>19 A. No. I just wanted to see if there were</p> <p>20 examples of where an African American candidate</p> <p>21 even in districts under 40 percent was elected.</p> <p>22 Q. Now, do you think that -- if I told you that of</p> <p>23 the districts in Table 4, do you have any</p> <p>24 reason to disagree with me if I told you that</p> <p>25 the candidates who won those districts, other</p> <p style="text-align: right;">106</p>	<p>1 favorable to Democrats?</p> <p>2 A. It would depend on the rest of the plans</p> <p>3 because there are lots of other districts so</p> <p>4 you can't make any conclusions about the</p> <p>5 overall plan just from this list of 32</p> <p>6 districts.</p> <p>7 Q. Well, isn't it fair to say that the more</p> <p>8 districts you create in North Carolina with</p> <p>9 black VAP between 30 and 37.39 percent, those</p> <p>10 districts are more likely to elect white</p> <p>11 Democrats than Republicans?</p> <p>12 A. Absolutely, but that doesn't mean that the plan</p> <p>13 as a whole, because of the creation of these</p> <p>14 districts, necessarily favors white Democrats.</p> <p>15 Q. Would any map-drawer with your level of</p> <p>16 expertise understand that creating a district</p> <p>17 in North Carolina with black VAP between</p> <p>18 30 percent and 38 percent, those districts</p> <p>19 would be more likely to elect white Democrats?</p> <p>20 A. Put that way, that's correct.</p> <p>21 Q. And they're not very likely to elect black</p> <p>22 Democrats, are they?</p> <p>23 A. Some might, but overall you wouldn't say</p> <p>24 there's a pattern of electing black Democrats,</p> <p>25 no, but there are examples of that.</p> <p style="text-align: right;">108</p>

<p>1 Q. And you've given the examples that you could 2 recall in your second report?</p> <p>3 A. That's right. I think there is one example in 4 the Senate district and one example in a House 5 district.</p> <p>6 Q. I think you actually gave four, at least.</p> <p>7 A. Okay, but I thought you were referring only to 8 the 30 --</p> <p>9 Q. That's true.</p> <p>10 A. There were others -- yes, there were others in 11 lower concentrations of African Americans 12 that -- which is, again, why you can't have an 13 absolute, you know, talismanic rule.</p> <p>14 Q. Now, House District 39 that is reported on 15 Table 4 --</p> <p>16 A. Yes.</p> <p>17 Q. -- do you know anything about the racial 18 breakdown of that district other than the black 19 voting age population? Did you study anything 20 else about racial demographics for that 21 district?</p> <p>22 A. No.</p> <p>23 Q. Did you look at the democratic registration for 24 that district?</p> <p>25 A. No.</p> <p style="text-align: right;">109</p>	<p>1 District 5, Senate District 24, House 2 District 39 and House District 41.</p> <p>3 A. Yes.</p> <p>4 Q. Do you know where those districts are located?</p> <p>5 A. I don't.</p> <p>6 Q. Do you know -- and I think you've said this, 7 but just to be clear, you didn't look to see 8 how much money was spent by either the 9 candidates or the political parties in these 10 elections?</p> <p>11 A. No.</p> <p>12 Q. You didn't look at the actual margin of 13 victory?</p> <p>14 A. No.</p> <p>15 Q. Did you look at anything about -- other 16 political factors that could have gone into 17 resulting in the election result that you 18 reported?</p> <p>19 A. No. I simply concluded that white bloc voting 20 in these districts in these elections I pointed 21 to was not sufficient to defeat an African 22 American candidate.</p> <p>23 Q. Okay. In the elections you looked at?</p> <p>24 A. In the elections -- yes, in the elections, 25 obviously, that I looked at. Can't be in the</p> <p style="text-align: right;">111</p>
<p>1 Q. Did you look at the percentage of blacks who 2 were registered Democrats in that district?</p> <p>3 A. No.</p> <p>4 Q. In any of the elections for House District 39, 5 did you evaluate how much money was spent by 6 each candidate?</p> <p>7 A. I didn't do that in any district in any 8 election.</p> <p>9 Q. Okay. And did you -- did you confirm whether 10 or not -- I think you did. After the 2000 -- 11 in the 2010 election, this district did not 12 elect a black candidate, did it?</p> <p>13 A. I think the black candidate retired or resigned 14 and you had a white Democrat elected.</p> <p>15 Q. Okay. Now, let's look back to the section in 16 your second report about these districts that 17 are less than 40 percent black.</p> <p>18 A. Okay. We're looking at Exhibit 6 now?</p> <p>19 Q. Yes.</p> <p>20 A. We're finished with --</p> <p>21 Q. No, we're not finished with it. I want to stay 22 on the topic if I can. I'm trying to anyway.</p> <p>23 So for -- you report elections where 24 blacks were elected in districts that were less 25 than 30 -- 40 percent and you listed Senate</p> <p style="text-align: right;">110</p>	<p>1 elections I didn't look at.</p> <p>2 Q. Does a black candidate have an opportunity to 3 get elected in any district? Is there an 4 opportunity?</p> <p>5 A. In principle, anyone can get elected in any 6 district, that's correct, but obviously 7 likelihoods vary considerably.</p> <p>8 Q. In any of these elections, Senate District 5, 9 24, House District 39 and House District 41, do 10 you have any information about the strength or 11 weakness of the candidate that was opposing -- 12 the political strength or weakness of the 13 candidate who was opposing the black candidate?</p> <p>14 A. Only to the extent that these black candidates 15 prevailed, even in cases of polarized voting 16 where the great majority of white voters voted 17 for the opposition candidate.</p> <p>18 Other than that, I did not in any 19 election go behind the results to parse out the 20 strengths and weaknesses of any individual 21 candidate in any election.</p> <p>22 Q. So let's walk through these very quickly and 23 then I'll move off of this.</p> <p>24 A. Then I think we should probably break. It's 25 about 12:30.</p> <p style="text-align: right;">112</p>

<p>1 Q. All right. So in Senate District 5, you</p> <p>2 reported that the black candidate lost in 2010.</p> <p>3 A. That is correct.</p> <p>4 Q. And do you agree that there was, as you</p> <p>5 describe it, politically significant racially</p> <p>6 polarized voting in that election?</p> <p>7 A. In that election, yes. Not in the 2008</p> <p>8 election.</p> <p>9 Q. Now, Senate District 24, do you agree that that</p> <p>10 black candidate lost in the 2010 election?</p> <p>11 A. I have to look.</p> <p>12 Yes.</p> <p>13 Q. Okay. Did you look at the racial</p> <p>14 characteristics of that district?</p> <p>15 A. Beyond the black VAP?</p> <p>16 Q. Yes.</p> <p>17 A. No.</p> <p>18 Q. And would you agree that in 2010 there was</p> <p>19 politically significant racially polarized</p> <p>20 voting in that district?</p> <p>21 A. In the 21 percent district, correct.</p> <p>22 Q. All right. We talked about House District 39.</p> <p>23 You agree there was not a black candidate</p> <p>24 elected in that district in 2010 elections.</p> <p>25 A. Right, but a black candidate of choice was</p> <p style="text-align: right;">113</p>	<p>1 hope we will be done.</p> <p>2 A. I'm on Exhibit 3. Which page?</p> <p>3 Q. Table 5. Okay. You've got -- Table 5 is the</p> <p>4 same thing for the Senate as you did for the</p> <p>5 House in Table 4?</p> <p>6 A. Right.</p> <p>7 Q. And you've got seven Senate districts in the</p> <p>8 old plan that are under 40 percent listed</p> <p>9 there, correct?</p> <p>10 A. I believe that's right. I haven't counted, but</p> <p>11 I'll take your word.</p> <p>12 Q. Okay. Fair to say, Dr. Lichtman, that of those</p> <p>13 seven 2003 districts, the only one in which a</p> <p>14 black candidate ever won was Senate District 5?</p> <p>15 A. Yes, which was way down at 30.99, again,</p> <p>16 showing for some of these districts you've got</p> <p>17 to look at local conditions. And districts</p> <p>18 below 40 percent in particular localities may</p> <p>19 be reasonable opportunity districts that give</p> <p>20 blacks a realistic opportunity to elect</p> <p>21 candidates of their choice. I'm not saying</p> <p>22 this proves that, but it does indicate that</p> <p>23 possibility.</p> <p>24 Q. Right. Didn't Gingles -- do you recall Gingles</p> <p>25 said you can't just look at one election to</p> <p style="text-align: right;">115</p>
<p>1 elected.</p> <p>2 Q. That's because you're describing a black</p> <p>3 candidate of choice as the white Democrat in</p> <p>4 the general election?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 A. That's where the candidate lost to the</p> <p>8 Republican, correct?</p> <p>9 Q. Okay. And House District 41, you agree that</p> <p>10 there was no black candidate elected in that</p> <p>11 district in 2010.</p> <p>12 A. That's correct.</p> <p>13 Q. And you don't know any of the circumstances</p> <p>14 about that election or issues related to the</p> <p>15 candidates in the prior elections in this</p> <p>16 district or how much money either candidate</p> <p>17 spent?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. It's a good stopping point.</p> <p>20 (Lunch Recess: 12:29 to 1:23 p.m.)</p> <p>21 BY MR. FARR:</p> <p>22 Q. Dr. Lichtman, I've got a few more questions on</p> <p>23 Exhibit 3 and then we're going to move over to</p> <p>24 your second affidavit; then I'm going to ask</p> <p>25 you questions about your surrebuttal and then I</p> <p style="text-align: right;">114</p>	<p>1 make conclusions about racially polarized</p> <p>2 voting or whether a black has a reasonable</p> <p>3 opportunity to win a district or not?</p> <p>4 A. That's right. That's right. When we talked</p> <p>5 about HD 8 and you kept asking me can you pump</p> <p>6 it up to 65 and 70, that was one election. You</p> <p>7 never would create a district, particularly one</p> <p>8 at that level, which would affect other</p> <p>9 districts based on one election.</p> <p>10 And I'm by no means saying you can</p> <p>11 conclude from one election in SD 5 that a</p> <p>12 district at 30 point -- it's 31 percent is</p> <p>13 going to be a reasonable opportunity district,</p> <p>14 but it does show, again, the need to look at --</p> <p>15 you know, if you are in this range below</p> <p>16 40 percent, it is not impossible -- it's</p> <p>17 possible that you may be able to create African</p> <p>18 American opportunity districts in a particular</p> <p>19 locality below 40 percent. There's no -- as</p> <p>20 I've said several times in this deposition,</p> <p>21 there's no talismanic line.</p> <p>22 Q. Do you have to have an expert to figure out</p> <p>23 what the right percentage is?</p> <p>24 A. Well, if you're going down at this level, I</p> <p>25 think that's right. As I said, as a generic</p> <p style="text-align: right;">116</p>

<p>1 guideline, 40 percent has proven to be 2 sufficient, but that doesn't mean in any given 3 area it might not be possible to create a 4 district below that.</p> <p>5 In Florida, a number of districts were 6 created in the 30 percent range that were 7 affective districts that gave African Americans 8 realistic opportunities to elect candidates of 9 choice.</p> <p>10 Q. Just out of curiosity, did those districts in 11 Florida have a lot of Hispanics in them also?</p> <p>12 A. Not a whole lot. Some did. Some didn't. Not 13 necessarily because they weren't necessarily in 14 the Miami-Dade area.</p> <p>15 Q. Is the percentage of black voters that would go 16 into a district connected to the type of white 17 voters that are also in the district? For 18 example, if you had a 30 percent black district 19 with 70 percent Republicans in it, would that 20 likely be an opportunity district?</p> <p>21 A. Probably not, but, again, you can test that 22 directly, as we've discussed, by looking at the 23 black component of the Democratic primary and 24 then in turn looking at general elections. If 25 in fact you had 30 percent African Americans</p> <p style="text-align: right;">117</p>	<p>1 opportunity for African American voters to 2 influence the political process across the 3 State of North Carolina.</p> <p>4 Can you tell me what you mean by that.</p> <p>5 A. I think we discussed that earlier. When you're 6 putting African Americans in a district above 7 and beyond what is necessary to provide a 8 realistic opportunity or an ability to elect, 9 that's sometimes called wasted African American 10 votes that could be allocated elsewhere to 11 expand African American influence without 12 diminishing the ability of those districts to 13 elect African American candidates of their 14 choice.</p> <p>15 Q. Do you think that's required by the Voting 16 Rights Act?</p> <p>17 A. I didn't say that is required by the Voting 18 Rights Act, but I think constitutionally the 19 courts have said it is required that you do not 20 have racial quotas and draw districts 21 predominated by race regardless of influence 22 elsewhere, that that creates a stigma on 23 African Americans and is harmful unto itself. 24 It promotes impressions of racial divisiveness 25 and racial divisions.</p> <p style="text-align: right;">119</p>
<p>1 and 70 percent white Republicans, that would 2 probably mean African Americans would dominate 3 the primary, but it will probably also mean 4 they couldn't win a general election, but, 5 again, you wouldn't have to indirectly estimate 6 those things because we can directly determine 7 those calculations.</p> <p>8 Q. Okay. And, Dr. Lichtman, just to be clear on 9 this, have you -- you haven't studied whether 10 you can draw a 40 percent black district in 11 North Carolina and comply with the state 12 constitutional criteria?</p> <p>13 A. I haven't studied the state constitution 14 criteria, but I'll leave it at that.</p> <p>15 Q. That's it. That's all I need.</p> <p>16 A. That's all you asked me.</p> <p>17 Q. Let's turn to Exhibit 6.</p> <p>18 A. Yes.</p> <p>19 Q. I'm looking at Page 4 in some of your bullet 20 points there, and you say -- there's one bullet 21 point that says the insistence on creating 22 African American ability districts that are 23 over 50 percent or more African American in 24 their voting age population needlessly wastes 25 African American votes and diminishes the</p> <p style="text-align: right;">118</p>	<p>1 Q. So that injury you just described occurs only 2 in a 50 percent plus district? It would not 3 occur in a 40 to 50 percent district?</p> <p>4 A. I did not say that. I said it occurs when you 5 have a racial quota that results in districts 6 being drawn predominantly on the basis of race, 7 when you have this fixed racial quota, 8 particularly when you have one that is not 9 based upon any assessment of whether or not 10 districts at that level are needed to provide 11 African Americans realistic opportunities to 12 elect candidates of their choice.</p> <p>13 In that sense, in a procrustean way, 14 forcing the creation of these African American 15 single-race majority districts.</p> <p>16 Q. Okay. Paragraph 6 you use the word -- there's 17 a word in that paragraph "small number of 18 Asians and members of other races." Do you see 19 the word "small"?</p> <p>20 A. I do.</p> <p>21 Q. What do you mean by small?</p> <p>22 A. Yeah. I think we discussed that previously 23 because I was able to assess that when I looked 24 at turnouts in the Democratic primary 25 elections, and it was, I think in virtually</p> <p style="text-align: right;">120</p>

<p>1 every case, low single digits, not enough to</p> <p>2 have any substantial influence on the analysis</p> <p>3 or the outcome of elections.</p> <p>4 Q. How did you measure the -- there's counties in</p> <p>5 North Carolina where there's a higher Hispanic</p> <p>6 population than other places. Isn't that fair</p> <p>7 to say?</p> <p>8 A. Yes, of course.</p> <p>9 Q. All right. Mecklenburg or Wake County or some</p> <p>10 of the urban counties have more Hispanics?</p> <p>11 A. Of course, but I didn't look at counties. I</p> <p>12 did a district-specific analysis.</p> <p>13 Q. You are able to look at the Hispanic turnout</p> <p>14 by --</p> <p>15 A. Absolutely.</p> <p>16 Q. How did you do that?</p> <p>17 A. Because it's the residual -- it's not the</p> <p>18 Hispanic. I think I said Hispanics and others.</p> <p>19 It's more than Hispanics.</p> <p>20 It's the residual of 100 percent minus</p> <p>21 the percentage of black turnout plus the</p> <p>22 percentage of white turnout. And by percentage</p> <p>23 of turnout, I mean the components of the</p> <p>24 turnout that is white and black.</p> <p>25 So let's say you have a district that</p> <p style="text-align: right;">121</p>	<p>1 that they could represent a majority of the</p> <p>2 citizen age population in a district like that?</p> <p>3 A. It's possible but not likely that they would</p> <p>4 jump more than 8 points from BVAP to CVAP.</p> <p>5 Anything's possible since we're doing</p> <p>6 hypotheticals.</p> <p>7 Q. Is it possible that they could represent a</p> <p>8 majority of the registered voters in</p> <p>9 the district?</p> <p>10 A. Anything's possible since we're dealing with</p> <p>11 hypotheticals.</p> <p>12 Q. Did you look for that as a possibility in any</p> <p>13 of the districts you looked at?</p> <p>14 A. I think we've already gone over this. I</p> <p>15 absolutely looked at it in the critical</p> <p>16 Democratic primaries. It was not necessary to</p> <p>17 look at it in the general elections because we</p> <p>18 had the actual results showing a 100 percent</p> <p>19 win rate over a vast array of elections all</p> <p>20 over the state and we had the results of the</p> <p>21 statewide election showing overwhelmingly</p> <p>22 Democratic majorities in all of the 40 percent</p> <p>23 plus districts.</p> <p>24 And so this established that African</p> <p>25 Americans control the primaries and then</p> <p style="text-align: right;">123</p>
<p>1 the components of the turnout are 57 percent</p> <p>2 African American and 40 percent non-Hispanic</p> <p>3 white, that means the -- all of the others are</p> <p>4 3 percent. So it was not a difficult</p> <p>5 determination.</p> <p>6 Q. Okay. Let me ask you this question,</p> <p>7 Dr. Lichtman: Can somebody draw -- in a</p> <p>8 redistricting plan draw a district that</p> <p>9 effectively has the voting population as</p> <p>10 majority black where the VAP -- black VAP is</p> <p>11 under 50 percent --</p> <p>12 A. I'm sorry. You said voting population; then</p> <p>13 you switched to VAP. Those are two different</p> <p>14 things. What are you talking about?</p> <p>15 Q. Let me try to re-ask the question, if I can.</p> <p>16 A. Please.</p> <p>17 Q. Let's say a district has 10 percent Hispanic</p> <p>18 population for one person/one vote purposes and</p> <p>19 it's drawn, say, at 42 percent black VAP.</p> <p>20 Could blacks actually represent a majority of</p> <p>21 the eligible voters in a district like that?</p> <p>22 A. I don't know what you mean by eligible voters.</p> <p>23 You mean registered voters, voters who turn</p> <p>24 out, or VAP?</p> <p>25 Q. Let's look in various ways. Isn't it possible</p> <p style="text-align: right;">122</p>	<p>1 whatever candidate comes out of the primaries</p> <p>2 is -- again, nothing is a hundred certain but</p> <p>3 virtually certain to win the general election.</p> <p>4 Q. I'm going to try not to ask that again.</p> <p>5 A. Pardon me.</p> <p>6 Q. I may slip up but, I'll try not to ask that</p> <p>7 question again.</p> <p>8 Now, on Page 4 of Exhibit 6, you say:</p> <p>9 "Such diminished opportunities are</p> <p>10 demonstrated by a comparison of previous</p> <p>11 state legislative districts with current</p> <p>12 legislative districts enacted by the</p> <p>13 General Assembly."</p> <p>14 A. I'm not sure where that is.</p> <p>15 Q. I'm on Page 4 of Exhibit 6.</p> <p>16 A. And you're on Paragraph 6.</p> <p>17 Q. No. The third bullet point.</p> <p>18 A. Oh, the third bullet point.</p> <p>19 Q. And I'll read it again.</p> <p>20 A. I see it now.</p> <p>21 Q. "Such diminished opportunities are</p> <p>22 demonstrated by a comparison of previous</p> <p>23 state legislative districts with current</p> <p>24 legislative districts enacted by the</p> <p>25 North Carolina General Assembly."</p> <p style="text-align: right;">124</p>

<p>1 A. I see it.</p> <p>2 Q. Did you compare the enacted districts in 2011</p> <p>3 with any other map that would be considered a</p> <p>4 legal plan following the 2010 census?</p> <p>5 A. I think you already asked me that and I said</p> <p>6 no.</p> <p>7 Q. Okay. Okay. I have a question on Paragraph 9.</p> <p>8 In Paragraph 9, you have a sentence that says:</p> <p>9 "The results of analyzing these two</p> <p>10 sets of districts, presented below,</p> <p>11 clearly reject the need to create 50</p> <p>12 percent plus African American VAP</p> <p>13 districts."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Does your analysis reflect that there's a need</p> <p>17 to create districts of 40 percent plus African</p> <p>18 American?</p> <p>19 A. I think you asked me that, and I'll give you my</p> <p>20 answer again because I might have given it to</p> <p>21 you in several parts.</p> <p>22 As a generic matter, the results show</p> <p>23 that a district at 40 percent to 49.9 percent</p> <p>24 black voting age population will provide</p> <p>25 African American voters a realistic opportunity</p> <p style="text-align: right;">125</p>	<p>1 Q. Do you have an opinion on whether the 40</p> <p>2 percent plus districts that were created in the</p> <p>3 2003 legislative plans were needed, as you've</p> <p>4 used that term?</p> <p>5 A. What I said about needed was as a general</p> <p>6 guideline 40 percent, but that's not, you know,</p> <p>7 a talismanic number. You could create it</p> <p>8 below.</p> <p>9 Was it possible that you could have</p> <p>10 created districts in that plan below 40 percent</p> <p>11 that provided realistic opportunities,</p> <p>12 absolutely possible. What I found, though, was</p> <p>13 that looking at the 40 percent and above, if</p> <p>14 you created districts at that level, those</p> <p>15 districts that you had created previously</p> <p>16 demonstrated that such districts provided</p> <p>17 realistic opportunities so you didn't need to</p> <p>18 go to the 50 percent rule, but that didn't mean</p> <p>19 the converse is true, that you could not go</p> <p>20 below 40 percent. I don't know if that would</p> <p>21 have been possible or not, but you'd have to</p> <p>22 look at that district specific.</p> <p>23 Q. I want to turn now to your part of this report</p> <p>24 about Dr. Brunell. I've got a few questions</p> <p>25 about this.</p> <p style="text-align: right;">127</p>
<p>1 to elect African American candidates or, in</p> <p>2 rare instances, white candidates of their</p> <p>3 choice. The win rates for those districts are</p> <p>4 90 percent or above depending on how you look</p> <p>5 at the analysis. 100 percent in general</p> <p>6 elections.</p> <p>7 That does not mean, however, that that</p> <p>8 is an absolute rule for every single district</p> <p>9 in every area of the state. It may well be,</p> <p>10 and we discussed this in the context -- I</p> <p>11 forget which of the district it was. I think</p> <p>12 it was a Senate district at 31 percent. It</p> <p>13 might be possible depending upon the specific</p> <p>14 analysis in a specific part of the state to</p> <p>15 create a district below 40 percent African</p> <p>16 American VAP which does provide African</p> <p>17 American voters a realistic opportunity to</p> <p>18 elect candidates of their choice.</p> <p>19 That's the difference between</p> <p>20 guidelines, which is what I give when I give</p> <p>21 redistricting advice, and procrustean, absolute</p> <p>22 rules that establish quotas.</p> <p>23 Q. What's procrustean?</p> <p>24 A. It means it's fixed. You can't move. It's The</p> <p>25 Bed of Procrustes.</p> <p style="text-align: right;">126</p>	<p>1 A. Sure. What page are we on?</p> <p>2 Q. I'm on 12.</p> <p>3 A. Yes.</p> <p>4 Q. Throughout this you talk about that Brunell</p> <p>5 looked at elections in, quote, "counties of</p> <p>6 interest."</p> <p>7 A. Where did I say that?</p> <p>8 Q. Look at Page 13.</p> <p>9 A. Oh, I was on Page 12. I'm sorry. You have to</p> <p>10 point me to where it is. It's a pretty dense</p> <p>11 page.</p> <p>12 Q. Okay. Well, it's on Paragraph 23. It's like</p> <p>13 about five lines down.</p> <p>14 A. Okay. Thank you. That's what he calls</p> <p>15 counties of interest, that's right.</p> <p>16 Q. Did you attempt to figure out why he would have</p> <p>17 picked the counties he looked at? Was it like</p> <p>18 irrational for him to look at the counties he</p> <p>19 looked at or arbitrary?</p> <p>20 A. I think he suggested or maybe he was -- you</p> <p>21 know, as I recall -- this is a long time ago,</p> <p>22 but as I recall, those were the ones he was</p> <p>23 instructed to look at, that he did not pick</p> <p>24 these counties, that he was told to look at</p> <p>25 them by either the lawyers or the leaders of</p> <p style="text-align: right;">128</p>

<p>1 the state legislature through the lawyers. So</p> <p>2 this was not something he independently did.</p> <p>3 Q. Did you look to see whether some of these</p> <p>4 counties were covered by Section 5?</p> <p>5 A. I'm sure some of them were, but I'm sure not</p> <p>6 all of them were.</p> <p>7 Q. Did you look to see where the concentrations of</p> <p>8 black populations were in the state where a</p> <p>9 single-member district could be created?</p> <p>10 A. I didn't, but you have to understand,</p> <p>11 single-member districts extend beyond</p> <p>12 concentrations, that is, districts also</p> <p>13 incorporate parts -- can also incorporate parts</p> <p>14 of white areas. So you would want to know</p> <p>15 voting patterns there as well.</p> <p>16 Q. Did you look to see whether the counties he</p> <p>17 looked at were counties that could support the</p> <p>18 potential creation of a single-member black</p> <p>19 district based upon a reasonably compact black</p> <p>20 population?</p> <p>21 A. What do you mean by a black district?</p> <p>22 Q. Majority black district.</p> <p>23 A. Oh, that's certainly possible. And, again, if</p> <p>24 that's what he was instructed to do, and I</p> <p>25 believe he was instructed, then that is further</p> <p style="text-align: right;">129</p>	<p>1 A. I'd have to look and see what my critique is.</p> <p>2 I think mostly his own -- his own internal</p> <p>3 results and his own internal problems.</p> <p>4 Q. Did you -- were you aware of the fact that</p> <p>5 there was an expert offered by the NAACP and</p> <p>6 other groups during the redistricting process</p> <p>7 who provided a report on racially polarized</p> <p>8 voting?</p> <p>9 A. I think there was another expert. I don't know</p> <p>10 who that -- I think his name was Dr. Block, but</p> <p>11 I don't know who he produced that report on</p> <p>12 behalf of or if I do, I don't recall.</p> <p>13 Q. Did you ever look at his report?</p> <p>14 A. I think I did cursorily looked at it. I don't</p> <p>15 think I testified about it, but, again, it was</p> <p>16 a long time ago so I can't be a hundred percent</p> <p>17 sure, but I don't believe I testified about it,</p> <p>18 but I do recall looking at it.</p> <p>19 Q. You didn't offer a critique of Dr. Block's</p> <p>20 report?</p> <p>21 A. In my report?</p> <p>22 Q. Yes.</p> <p>23 A. No. As I said, I did look at it, though.</p> <p>24 Q. Why didn't you look at Dr. Block's report?</p> <p>25 A. I did look at it.</p> <p style="text-align: right;">131</p>
<p>1 indication of the fact that, you know, the</p> <p>2 state was following this racial quota rule that</p> <p>3 they were only interested in creating 50 plus</p> <p>4 one percent black voting age population</p> <p>5 districts.</p> <p>6 Q. Well Dr. Lichtman, you're familiar with</p> <p>7 North Carolina. You've been down here and</p> <p>8 testified in a number of cases.</p> <p>9 A. I have.</p> <p>10 Q. Are you familiar with where the black</p> <p>11 population generally reside?</p> <p>12 A. No, I have not studied in detail. I mean, I</p> <p>13 have a vague idea, but, no, I've not drawn a</p> <p>14 plan for North Carolina.</p> <p>15 Q. Can you create a 40 percent black district in</p> <p>16 an area where there are no blacks?</p> <p>17 A. Of course not, but a 40 percent black district</p> <p>18 might incorporate part of an area, not where</p> <p>19 there are no blacks but where there are a small</p> <p>20 number of blacks, yes.</p> <p>21 Q. Are you aware of any examples of that?</p> <p>22 A. No. I didn't go through, as I told you, and</p> <p>23 try to draw plans.</p> <p>24 Q. What did you -- what data did you look at to</p> <p>25 critique Dr. Brunell's report?</p> <p style="text-align: right;">130</p>	<p>1 Q. Why didn't you offer an opinion on it?</p> <p>2 A. Because I believe the state was relying on</p> <p>3 Dr. Brunell. And I don't even know if</p> <p>4 Dr. Block testified. I don't recall him</p> <p>5 testifying, but, again, you know, we can check</p> <p>6 that. I'm recalling things from a long time</p> <p>7 ago.</p> <p>8 Q. Well, let me represent to you that that report</p> <p>9 was presented to the legislature before they</p> <p>10 enacted plans. Is there any reason why you</p> <p>11 wouldn't have looked at that?</p> <p>12 A. I did look at it.</p> <p>13 Q. Did you look to see whether Dr. Block's report</p> <p>14 supported the legislature's decisions?</p> <p>15 A. My recollection is Dr. Block's report was</p> <p>16 fatally inaccurate, that he misapplied his</p> <p>17 analysis. And Dr. Brunell did so as well.</p> <p>18 I also recollect in terms of what the</p> <p>19 legislature had before it, that the legislature</p> <p>20 was asking, from my recollection of both</p> <p>21 reports, Dr. Block and Dr. Brunell, the wrong</p> <p>22 question; that is, the legislature was simply</p> <p>23 asking is there statistically significant</p> <p>24 racially polarized voting, frankly, a question</p> <p>25 they already knew the answer to. You know,</p> <p style="text-align: right;">132</p>

<p>1 that's the case almost everywhere in the 2 country, in the exit polls, everyone commenting 3 upon before the redistricting showed that. The 4 question -- so it was kind of a 5 self-justifying, self-reinforcing question. 6 The question they should have been 7 asking that neither in my recollection -- 8 certainly not Dr. Brunell and in my 9 recollection Dr. Block did not address is the 10 political significance of any racially 11 polarized voting that is found in terms of the 12 ability of African American voters to elect 13 African American candidates or white candidates 14 of their choice in a given district. 15 And I provided that analysis here for 16 Dr. Brunell's results showing even in a 17 district, you know, at a 40 percent African 18 American turnout, you would still be predicting 19 a substantial majority for the African American 20 candidate of choice. 21 So these reports did not answer the 22 right question because the right question was 23 never asked; instead, a self-justifying 24 question was asked by the legislature. 25 Q. Did the legislature ask Dr. Block to submit a</p> <p style="text-align: right;">133</p>	<p>1 lady who's sitting next to you right now, 2 Ms. Earls? 3 A. I'm sorry, Ms. Earls, but I don't recall your 4 testimony. 5 Q. Did you -- were you aware of any testimony by 6 members of the public on the issue of racially 7 polarized voting? 8 A. I'm sure there was testimony by the public. I 9 looked at the expert analyses. I'm not aware 10 of any other expert analyses other than Brunell 11 and Block, but if there are, I'd be happy to 12 let you know. 13 Q. You didn't look at any other testimony or 14 evidence on racially polarized voting and put 15 that in your report other than what Brunell 16 did? 17 A. And what I did. 18 Q. Well, your testimony wasn't before the 19 legislature, was it? 20 A. That is correct, it was not before the 21 legislature. I'm not aware of any other expert 22 analysis -- let me finish. I'm not aware of 23 any other expert analyses before the 24 legislature, but if there was, please let me 25 know.</p> <p style="text-align: right;">135</p>
<p>1 report? 2 A. I don't know. I'm just telling you what I know 3 from Dr. Brunell and from what I know was in 4 Dr. Block's report. 5 Q. Why didn't you include your critique of 6 Dr. Block in this report? 7 A. I don't recall -- as I said, I don't recall 8 that he was testifying, and I don't recall the 9 circumstances of his report. 10 Now you've refreshed me and I've given 11 you my assessment. Even if accurate, which his 12 report was not, it still didn't ask the right 13 question. 14 Q. Do you know who submitted Dr. Block's report? 15 A. You already asked me that and I said I don't. 16 Q. Okay. Did you review any other testimony 17 before the legislature on racially polarized 18 voting besides those two expert reports? 19 A. Not that I recall. It's not impossible, but 20 not that I recall. If you want to bring up any 21 particular person, I'll be happy to tell you 22 whether I recall anything about them or not, 23 but generically I only recall looking at 24 Brunell and Block. 25 Q. Do you recall any testimony by the very nice</p> <p style="text-align: right;">134</p>	<p>1 Q. But the only evidence on racial polarization 2 that you reported on in your report was 3 Dr. Brunell's report? 4 A. That's correct. 5 Q. Did you consider or did you review alternative 6 maps submitted to the General Assembly which 7 included majority black or districts that were 8 over 40 percent black in your study? 9 A. I think you asked me that already and I said I 10 did not review alternative maps. 11 Q. So you don't know where the alternative maps 12 proposed majority black districts or 40 percent 13 districts? 14 A. Or anything about the alternative maps since I 15 didn't look at them. 16 Q. Did you review any opinions offered by the 17 North Carolina School of Government about 18 racial polarization? 19 A. The who? 20 Q. The North Carolina School of Government. 21 A. I don't recall that, but if you have something 22 to present to me, I'll look at it, but I don't 23 recall an analysis by that group. 24 Q. Do you recall that group giving opinions about 25 the Gingles case and whether it's still</p> <p style="text-align: right;">136</p>

<p>1 required in North Carolina to create affective 2 minority districts in the areas covered by 3 Gingles?</p> <p>4 A. I don't recall their particularized testimony 5 at this state.</p> <p>6 Q. Okay. Were you in the Cromartie case, 7 Dr. Lichtman?</p> <p>8 A. I don't believe so.</p> <p>9 Q. Do you know whether the court in that case 10 found the existence of legally significant 11 racially polarized voting in counties in 12 North Carolina encompassed by the 1st 13 congressional district?</p> <p>14 A. I don't recall their detailed findings on 15 racially polarized voting, no, but if you want 16 to show it to me, I'd be happy to look at it.</p> <p>17 Q. That wasn't something you considered in your 18 report?</p> <p>19 A. I considered racially polarized voting in my 20 report and, you know, indicated, indeed, 21 racially polarized voting existed in 22 North Carolina, but I went the next step, which 23 Dr. Brunell did not and Dr. Block did not, of 24 assessing the political significance of such 25 racially polarized voting for districts at</p> <p style="text-align: right;">137</p>	<p>1 black voting age population, blacks are going 2 to be a much higher share of the Democratic 3 primary electorate. That was true statewide 4 and it was true in every single-district 5 specific analysis that I did.</p> <p>6 Q. I don't want to beat a dead horse, 7 Dr. Lichtman, but, like, for the 2008 Obama 8 general election in North Carolina, you didn't 9 look at the turnout rate for blacks as compared 10 to the VAP for blacks or the registered voters 11 for blacks and then compare that to the turnout 12 rate for whites in those categories?</p> <p>13 A. Actually, I kind of did because when you look 14 at the black share of the electorate and you 15 see that it's about the same as the black share 16 of the voting age population, it follows from 17 that that black and white turnout have to be 18 very close, otherwise you would not have that 19 result.</p> <p>20 Similarly, in the primary, the fact 21 that it jumped almost double in terms of the 22 black share of the primary electorate as 23 opposed to the black share of the voting age 24 population indicates that for Democratic 25 primaries, the turnout rate of African</p> <p style="text-align: right;">139</p>
<p>1 varying levels of black voting age population. 2 We even discussed, and I discussed in 3 my report, the political significance of 4 racially polarized voting because the state as 5 a whole, which is only 21 percent African 6 American, and in a number of elections, 7 including the Hagan-Dole election, the Obama 8 primary in 2008, the Obama general election in 9 2008, even statewide racially polarized voting, 10 specifically white bloc voting, was not 11 sufficient to defeat the candidate of choice of 12 cohesive African American voters.</p> <p>13 Q. But in the elections you just mentioned, you 14 didn't actually study what percentage of the 15 electorate was black and what percentage was 16 white.</p> <p>17 A. You mean those -- no, not specifically, but it 18 was in the exit polls. And I do have some 19 recollection, actually, of what the electorate 20 was. And in the general elections, it was 21 pretty close to the black VAP of about 22 21 percent. And in the primary election -- I 23 think this may even be in one of my reports -- 24 it jumped up to 40 percent for the reasons 25 we've been discussing, that at a given level of</p> <p style="text-align: right;">138</p>	<p>1 Americans is much higher than the turnout rate 2 of whites which is roughly comparable in 3 general elections.</p> <p>4 So, yes, that -- I did present part of 5 that analysis in my report and it's also 6 evident from the exit polls.</p> <p>7 Q. Okay.</p> <p>8 A. And I believe in my North Carolina report, of 9 which you only picked out a part, I did look at 10 the African American share of the electorate.</p> <p>11 Q. Which exhibit was that?</p> <p>12 A. It's not in your exhibit because it's not part 13 of that North Carolina voter ID -- other 14 elements of the North Carolina VIVA that I 15 looked at, but it was in another part of that 16 report I did look at turnout by race in general 17 elections showing that in fact the white 18 component had declined and the black component 19 had gone up to, you know, around the low 20 20 percent level, roughly comparable to the 21 black voting age population in North Carolina.</p> <p>22 Q. Okay. There's a lot of questions there, but 23 I'm just going to skip over it.</p> <p>24 A. Okay. It's your choice.</p> <p>25 Q. Don't tempt me.</p> <p style="text-align: right;">140</p>

<p>1 I want to turn to your tables in this</p> <p>2 report, Exhibit 6. Dr. Lichtman, I want --</p> <p>3 like Table 1, I thought this was the same table</p> <p>4 as you had in your previous report, but if not,</p> <p>5 explain to me what's different about it.</p> <p>6 A. This table is different -- not different data</p> <p>7 but it's a different presentation. Here what I</p> <p>8 did was I isolated the 40 plus to 49.9 and the</p> <p>9 50 plus, from just over 50 to about --</p> <p>10 Q. Okay. I understand. So Table 1 and Table 2</p> <p>11 are the same as Table 1 in your first</p> <p>12 affidavit?</p> <p>13 A. Right, but formatted and presented differently.</p> <p>14 Q. But otherwise it's the same?</p> <p>15 A. Yeah.</p> <p>16 Q. All right. Is Table 3 in Exhibit 6 the same as</p> <p>17 Table 2 in Exhibit 3?</p> <p>18 A. I believe that's right.</p> <p>19 Q. I'm skipping over the congressional.</p> <p>20 Table 5 in Exhibit 6 is the same as</p> <p>21 Table 4 in Exhibit 3?</p> <p>22 A. I believe that's correct.</p> <p>23 Q. Table 6 in Exhibit 6 are the same as Table 5 in</p> <p>24 Exhibit 3?</p> <p>25 A. I believe that's correct.</p> <p style="text-align: right;">141</p>	<p>1 percentage of white voters who voted for the</p> <p>2 black candidate.</p> <p>3 A. And you've left one word out. The percentage</p> <p>4 of white voters who voted -- who voted for the</p> <p>5 black candidate, correct.</p> <p>6 Q. Right. Can the percentage of the white voters</p> <p>7 voting for the black candidate that would</p> <p>8 result in the black candidate winning differ or</p> <p>9 the turnout rates are higher, for example, say,</p> <p>10 for the blacks than the white voters, the</p> <p>11 actual turnout rates?</p> <p>12 A. It could depending on exactly how the analysis</p> <p>13 played out.</p> <p>14 Q. Say, for example, if 97 percent of the black</p> <p>15 voters voted for the black candidate and</p> <p>16 30 percent of the white voters voted for the</p> <p>17 black candidate --</p> <p>18 A. Correct.</p> <p>19 Q. -- could the black candidate still lose if the</p> <p>20 actual number of whites who turned out to vote</p> <p>21 was higher than the turnout rates for the black</p> <p>22 candidate?</p> <p>23 A. It would have to be much higher. I can</p> <p>24 calculate what it would have to be if you would</p> <p>25 like.</p> <p style="text-align: right;">143</p>
<p>1 Q. Okay. I wanted to ask you about Table 7.</p> <p>2 A. Table 7.</p> <p>3 Q. This is a new thing, I think.</p> <p>4 Did you have this in your prior report,</p> <p>5 Table 7 and Table 8?</p> <p>6 A. No.</p> <p>7 Q. All right. So let's talk about Table 7.</p> <p>8 What's Table 7?</p> <p>9 A. We talked about this previously when we</p> <p>10 discussed Senate District 5 and the fact that</p> <p>11 in the good Democratic year the African</p> <p>12 American candidate won, but in the very good</p> <p>13 Republican year the African American candidate</p> <p>14 lost. And it was not the result of any change</p> <p>15 in black voting behavior, but in the very good</p> <p>16 Republican year you had fewer white voters</p> <p>17 voting for the black Democrat by a substantial</p> <p>18 margin.</p> <p>19 Q. Dr. Lichtman, I'm going to ask you this</p> <p>20 question and I may get tongue tied asking it.</p> <p>21 The percentages that you're looking at</p> <p>22 in Table 7 are the percentage of black and</p> <p>23 white voters who voted for the black</p> <p>24 candidate -- the percentage of black voters who</p> <p>25 voted for the black candidate and the</p> <p style="text-align: right;">142</p>	<p>1 Q. Go ahead. Tell me how you're doing that.</p> <p>2 A. Same methodology I laid out in my report. You</p> <p>3 look at the turnout which is composed of</p> <p>4 blacks -- not the black turnout rate but what</p> <p>5 share of the electorate is black, what share of</p> <p>6 the electorate is white and you multiply it by</p> <p>7 the cohesion number and the crossover number.</p> <p>8 So let's say the turnout for blacks is</p> <p>9 35 percent. So it's 65 percent white. So it's</p> <p>10 35 times .97, right. Are you with me?</p> <p>11 Q. 35.</p> <p>12 A. Times .97 is the vote for the black candidate</p> <p>13 from blacks alone, in other words, getting</p> <p>14 almost all of the 35 percent, 33.95. Then we</p> <p>15 take 35 percent and multiply it by .3, right.</p> <p>16 That's 10.5. And so that's 44.5. So you would</p> <p>17 need black turnout to be a little bit higher.</p> <p>18 So let's say it was only 40 percent.</p> <p>19 So it's .4 and -- times 97.</p> <p>20 Q. So I want to make sure I understand this. .4</p> <p>21 is the percentage of what?</p> <p>22 A. Is the black component of the turnout.</p> <p>23 40 percent of those turning out are blacks.</p> <p>24 Under these --</p> <p>25 Q. 40 percent of the total people who voted were</p> <p style="text-align: right;">144</p>

<p>1 black?</p> <p>2 A. That's right. Would that give you a black</p> <p>3 victory. We can work that out.</p> <p>4 So it's 40 times .97. 40 times .97</p> <p>5 should be about 39. Yep. And then we have 60</p> <p>6 times .3 --</p> <p>7 Q. So what does 60 stand for?</p> <p>8 A. The white component, recognizing there may be a</p> <p>9 few others, but we call it white because you</p> <p>10 can't -- and that's 18 percent. So we add that</p> <p>11 together. It's a black victory. So 40 percent</p> <p>12 is a clear black victory. 30 isn't. So it's</p> <p>13 somewhere between 30 and 40. We can make it</p> <p>14 more specific if you like.</p> <p>15 Q. No, that's fine. I understand what you're</p> <p>16 saying.</p> <p>17 A. So you absolutely don't need a majority --</p> <p>18 anywhere close to a majority of the black</p> <p>19 turnout -- of the turnout being black.</p> <p>20 Q. Is Table 8 the same study that you performed</p> <p>21 for the Senate District 24 --</p> <p>22 A. Yes.</p> <p>23 Q. -- that we just talked about?</p> <p>24 A. Yes.</p> <p>25 Q. All right. Let's move on to your surrebuttal</p> <p style="text-align: right;">145</p>	<p>1 There's nothing new in here.</p> <p>2 Q. What about Table 2?</p> <p>3 A. Table 2 is new.</p> <p>4 Q. All right. Explain to me what Table 2 is.</p> <p>5 A. Table 2 does a statistical comparison of the</p> <p>6 actual outcomes of elections in districts 40 to</p> <p>7 49.9 percent BVAP as compared to districts over</p> <p>8 50 percent BVAP to show that African American</p> <p>9 candidates and African American candidates of</p> <p>10 choice of voters fare as well or better in 40</p> <p>11 to 49 percent African American voting age</p> <p>12 population districts as compared to districts</p> <p>13 at 50 percent plus one African American voting</p> <p>14 age population districts, demonstrating, again,</p> <p>15 it's not necessary to provide ability districts</p> <p>16 to have a 50 percent plus one rule.</p> <p>17 Q. Okay. Let's look at the first table. It says</p> <p>18 Primary and General Elections. There's like</p> <p>19 two tables in Table 2. As I read it, there's</p> <p>20 primary and general elections. Then there's</p> <p>21 primary elections.</p> <p>22 A. That's right. Then I isolate out primaries.</p> <p>23 Q. Again, you included in this analysis</p> <p>24 uncontested races?</p> <p>25 A. Of course. As we explained, uncontested races</p> <p style="text-align: right;">147</p>
<p>1 report.</p> <p>2 (WHEREUPON, Defendants' Exhibit 9 was</p> <p>3 marked for identification.)</p> <p>4 BY MR. FARR:</p> <p>5 Q. Okay. Exhibit 9, can you tell us what that is.</p> <p>6 A. My surrebuttal report.</p> <p>7 Q. What data did you look at to prepare this?</p> <p>8 A. I looked at Dr. Hood's report, I looked at my</p> <p>9 previous reports and I looked at exit poll data</p> <p>10 and I looked at the components district by</p> <p>11 district of blacks and non-blacks in Democratic</p> <p>12 primaries in all districts between 40 and</p> <p>13 49.9 percent voting age African American.</p> <p>14 I looked at State of North Carolina</p> <p>15 Board of Election official election returns,</p> <p>16 and I looked at the Democratic vote</p> <p>17 reconstituted in each of the 40 to 49.9 percent</p> <p>18 districts from statewide Democratic versus</p> <p>19 Republican recent elections based on when those</p> <p>20 districts existed, that is, 2008 and 2010.</p> <p>21 Q. Can you tell me what Table 1 is? Is this new</p> <p>22 for this report or is this something you did</p> <p>23 before?</p> <p>24 A. It's something I did before, again,</p> <p>25 reformatted. We've been over this already.</p> <p style="text-align: right;">146</p>	<p>1 are perhaps the most powerful indicator of</p> <p>2 districts that provide African American voters</p> <p>3 the ability to elect candidates of choice.</p> <p>4 Almost all the uncontested elections involve</p> <p>5 African Americans.</p> <p>6 If in fact these were not ability</p> <p>7 districts, if in fact these were districts</p> <p>8 where white voters through their bloc voting</p> <p>9 had the ability to elect different candidates</p> <p>10 of their choice, you would certainly expect</p> <p>11 white contenders. In fact, if you look at</p> <p>12 districts, you know, with relatively small</p> <p>13 percentage of blacks, you virtually always get</p> <p>14 white contenders.</p> <p>15 Q. All right. Dr. Lichtman, again, I apologize if</p> <p>16 I asked this before, but if you have an</p> <p>17 uncontested race, I think you said that can't</p> <p>18 be used to evaluate racially polarized voting.</p> <p>19 A. Of course not. You have to have an election,</p> <p>20 but that's not my purpose here.</p> <p>21 Q. I know.</p> <p>22 A. Remember, I said racially polarized voting is</p> <p>23 not indicative by itself of whether a district</p> <p>24 provides ability to elect.</p> <p>25 I'm looking at ability to elect. And</p> <p style="text-align: right;">148</p>

<p>1 uncontested elections are very powerful</p> <p>2 evidence of ability to elect. That's the</p> <p>3 bottom line here.</p> <p>4 Q. You can't use an uncontested election to try to</p> <p>5 determine the percentage of black population</p> <p>6 needed -- the exact percentage of population</p> <p>7 needed to provide an ability-to-elect district?</p> <p>8 A. Certainly you can.</p> <p>9 Q. Can you -- you can't use it to determine the</p> <p>10 level of racial polarization?</p> <p>11 A. That's correct. That's two different</p> <p>12 questions.</p> <p>13 Q. Okay. I understand your answer.</p> <p>14 I'm going to ask you about the top</p> <p>15 chart on primary and general elections where</p> <p>16 you have -- explain to me what plus 8 means</p> <p>17 versus -- at the bottom of that chart. You see</p> <p>18 where you've got plus 8 in the far right-hand</p> <p>19 column?</p> <p>20 A. Yeah. I'll tell you what that means. That</p> <p>21 means --</p> <p>22 Q. Explain to me how that's calculated.</p> <p>23 A. Sure. It's very simple. The win rate, in</p> <p>24 other words -- out of 40 elections, what is the</p> <p>25 win rate for black candidates in the 40 to</p> <p style="text-align: right;">149</p>	<p>1 Q. And you only reported -- as far as the -- does</p> <p>2 this calculation include uncontested elections?</p> <p>3 A. They all do, as well they should.</p> <p>4 Q. I know you think that. Do you know why</p> <p>5 candidates -- the black candidate lost in those</p> <p>6 elections that you just --</p> <p>7 A. HD 27 and HD 8 and 102. In HD 27, there were</p> <p>8 no black candidates. And, yes, I know why they</p> <p>9 lost in HD 27 and HD 102, and I provide that</p> <p>10 analysis in this report.</p> <p>11 Q. Okay. So in HD 27 there were no black</p> <p>12 candidates that ran against a white incumbent?</p> <p>13 A. If you say it's an incumbent, that's fine. I</p> <p>14 don't recall if it's an incumbent or not.</p> <p>15 Q. I think it's a guy named Michael Ray.</p> <p>16 A. Yeah, most likely.</p> <p>17 Q. In HD 8 -- we talked about that if there's an</p> <p>18 election where the black candidate lost to a</p> <p>19 white candidate in HD 8.</p> <p>20 A. Right. And I said that's not a result of the</p> <p>21 district being drawn below 50 percent. There</p> <p>22 just wasn't enough African American cohesion to</p> <p>23 elect the black candidate. Even at 60 percent</p> <p>24 there wouldn't have been enough African</p> <p>25 American cohesion. That was a function of a</p> <p style="text-align: right;">151</p>
<p>1 49.9 percent districts. It's 90 percent. What</p> <p>2 is the win rate in the 50 plus one percent</p> <p>3 districts. It's 82 percent. That means the</p> <p>4 win rate is 8 percentage points higher in the</p> <p>5 40 to 49.9 percent African American voting age</p> <p>6 population districts than it is in the 50 plus</p> <p>7 one African American voting age population</p> <p>8 districts.</p> <p>9 Q. Now -- so there were 48 -- 44 elections in</p> <p>10 districts that you reported were 50 percent</p> <p>11 plus black VAP?</p> <p>12 A. Correct.</p> <p>13 Q. And 36 won by the black candidate?</p> <p>14 A. Yes.</p> <p>15 Q. Is the difference between the number of</p> <p>16 elections and the number of elections won by a</p> <p>17 black candidate, is that all accounted for by</p> <p>18 House District 8 and House District 27?</p> <p>19 A. I would have to look.</p> <p>20 Q. If you would look for me, please. I think</p> <p>21 that's accurate.</p> <p>22 A. House District 102, House District 8 and House</p> <p>23 District 27. That's correct.</p> <p>24 Q. Okay.</p> <p>25 A. And -- yes.</p> <p style="text-align: right;">150</p>	<p>1 particular election where African Americans</p> <p>2 were not cohesive. You don't look for a</p> <p>3 hundred percent patterns. You look for usual</p> <p>4 patterns.</p> <p>5 Q. And HD 102, that election was the result of</p> <p>6 racially polarized voting in a low turnout</p> <p>7 election according to you.</p> <p>8 A. Let me look. I want to make sure I have it.</p> <p>9 HD 107 and 102 properly parsed out. I have it</p> <p>10 in here. I think that's in my other report,</p> <p>11 but I'll take your assessment there.</p> <p>12 I don't recall it exactly, but I think</p> <p>13 that's right. It was a very low turnout</p> <p>14 election. I think that was -- HD 102 was a</p> <p>15 very low turnout election in which blacks,</p> <p>16 again, were not strongly cohesive behind the</p> <p>17 candidate of their choice. I think it was only</p> <p>18 53.6 percent that voted HD 102 for the</p> <p>19 candidate of choice.</p> <p>20 Q. So in those elections where the black</p> <p>21 candidate -- the black candidate lost -- and</p> <p>22 just to be clear, Dr. Lichtman, what</p> <p>23 information did you look at?</p> <p>24 A. I looked at the actual returns of elections. I</p> <p>25 looked at the -- I think they all lost in</p> <p style="text-align: right;">152</p>

<p>1 primaries. I looked at the Democratic -- the</p> <p>2 African American component of the Democratic</p> <p>3 primary as well and the breakdown of the</p> <p>4 African American and white vote.</p> <p>5 Q. Did you do any statistical analysis for those?</p> <p>6 A. I did. That's how I got in HD 102 to the</p> <p>7 53.6 percent of the African American vote going</p> <p>8 for the African American candidate.</p> <p>9 Q. Did you look at anything else for this</p> <p>10 election?</p> <p>11 A. Yes. I think I -- beside the breakdown of the</p> <p>12 vote, I think I said I also looked at the</p> <p>13 actual results of the elections, and I looked</p> <p>14 at the African American component of the</p> <p>15 Democratic primary.</p> <p>16 Q. You say that Dr. Hood, on Page 6, incorrectly</p> <p>17 discounts uncontested elections.</p> <p>18 A. Yes.</p> <p>19 Q. What did he say about uncontested elections?</p> <p>20 A. I think he discounted them by, in his table,</p> <p>21 focusing on uncontested races only. He doesn't</p> <p>22 break it down in terms of the uncontested</p> <p>23 elections. And so his focus is on the</p> <p>24 contested races rather than looking at all the</p> <p>25 races.</p> <p style="text-align: right;">153</p>	<p>1 analysis of the effectiveness of districts</p> <p>2 turns primarily upon contested races only and</p> <p>3 conceals the fact that of the three contested</p> <p>4 races that the black candidate of choice lost,</p> <p>5 only one of them was at a 40 to 49 percent</p> <p>6 district.</p> <p>7 Q. Okay.</p> <p>8 A. And I don't see, either, where he looked at</p> <p>9 racially polarized voting for that matter.</p> <p>10 Q. All right. He didn't, like, conceal that, did</p> <p>11 he?</p> <p>12 A. It's concealed -- not that part, but this part</p> <p>13 is concealed in this table, yeah.</p> <p>14 Q. What table is that?</p> <p>15 A. Table 8. In other words, if you look at</p> <p>16 Table 8 -- and his whole argument is you need</p> <p>17 50 percent plus districts and he -- first of</p> <p>18 all, even in contested elections, 80 percent of</p> <p>19 the time African American candidates of choice</p> <p>20 wins. That is a very clear, usual pattern, but</p> <p>21 what he doesn't tell you is that even in the</p> <p>22 contested elections, that 20 percent, those</p> <p>23 three, only one of them is from a 40 to</p> <p>24 49.9 percent black VAP district. Two-thirds of</p> <p>25 them, or two out of three, are in fact from a</p> <p style="text-align: right;">155</p>
<p>1 And as I say in my report and as I told</p> <p>2 you, they did not provide information on</p> <p>3 polarized voting but they provide important</p> <p>4 information on the effectiveness.</p> <p>5 Q. Did Dr. Hood criticize you because the</p> <p>6 uncontested elections didn't provide</p> <p>7 information on racially polarized voting?</p> <p>8 A. I believe he did.</p> <p>9 Q. Did he make any other criticisms?</p> <p>10 A. Of my report?</p> <p>11 Q. Of the use of uncontested elections.</p> <p>12 A. I think that was his main criticism. I would</p> <p>13 have to go back and look at his report, but</p> <p>14 that's my recollection.</p> <p>15 Q. And you agree with his conclusion that the</p> <p>16 uncontested races don't give you any evidence</p> <p>17 on racially polarized voting?</p> <p>18 A. Of course not. We're repeating ourselves.</p> <p>19 Q. You don't have to. I got it.</p> <p>20 So the point being is the criticism he</p> <p>21 made of your report for using uncontested</p> <p>22 elections you agree we; he just didn't go the</p> <p>23 extra step to give your rationale for using</p> <p>24 uncontested elections?</p> <p>25 A. He didn't do that. And most critically, his</p> <p style="text-align: right;">154</p>	<p>1 50 percent plus district.</p> <p>2 And when he gets down later to</p> <p>3 analyzing the one district, the one example of</p> <p>4 an African American candidate of choice who</p> <p>5 didn't win, he gets the analysis factually</p> <p>6 incorrect.</p> <p>7 Q. Which one was that?</p> <p>8 A. HD 102.</p> <p>9 Q. How did he get that incorrect?</p> <p>10 A. It's in my report. Let me get to it. In HD --</p> <p>11 he says in HD 102 was only 42.7 percent black</p> <p>12 and that, you know, you would need a 50 percent</p> <p>13 district. He fails to note, however, that</p> <p>14 African Americans actually were a substantial</p> <p>15 majority, 56.5 percent of the 2010 Democratic</p> <p>16 primary turnout. Thus, they had effective</p> <p>17 control over the primary election. They</p> <p>18 prevailed. They did not prevail because they</p> <p>19 were -- basically split their vote. Only</p> <p>20 53.6 percent of them voted for the African</p> <p>21 American candidate.</p> <p>22 Q. So there were 56 percent of the electorate and</p> <p>23 53 percent voted for the black candidate?</p> <p>24 A. Yes.</p> <p>25 Q. What percentage is 53 percent of 56 percent?</p> <p style="text-align: right;">156</p>

<p>1 A. That means they got 29.9 percent of votes based 2 on African American votes alone.</p> <p>3 Q. That wasn't what I was asking. I wanted to 4 know what percentage of the African American 5 vote voted for the black candidate when you 6 divide 53 by 56 to get that --</p> <p>7 A. You can't divide -- that's an apples and orange 8 division. You're dividing -- that is, of a 9 hundred percent of all of those blacks who 10 turned out, only 53 percent of that 56.5 11 percent voted for the black candidate.</p> <p>12 So if you want to determine the votes 13 that the black candidate got from black voters, 14 you would multiply -- and we've done this 15 exercise several times.</p> <p>16 Q. I haven't -- I don't remember doing it for 102. 17 So tell me what it would be, then.</p> <p>18 A. I just did. You multiply 53.6 or .536 times 19 56.5 and you get 29.9.</p> <p>20 Q. What is that, 29.9 of the blacks voted for the 21 black candidate?</p> <p>22 A. No. You're misunderstanding.</p> <p>23 Q. No. I want to know what percentage of the 24 black voters voted for the black candidate.</p> <p>25 A. 53.6.</p> <p style="text-align: right;">157</p>	<p>1 also had looked at some of those. Maybe this 2 one -- no, I don't think we had looked at 3 presidential primaries in my report from the 4 VIVA case that you showed me.</p> <p>5 These are exit poll results for 6 primaries showing polarized voting nationally, 7 polarized voting in North Carolina and 8 polarized voting in other states holding 9 primaries within the closest range of the 10 North Carolina primary, which I believe was May 11 that year.</p> <p>12 Q. Do you report on the percentage of black 13 population VAP in the various states listed 14 here?</p> <p>15 A. No.</p> <p>16 Q. Does North Carolina have a higher black 17 percentage of voting age population black than 18 the other states?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know what the difference is?</p> <p>21 A. No, but it certainly does, but this is 22 certainly showing the polarization. That's all 23 it's doing. It's not assessing the 24 polarization relative to the black population. 25 And I didn't pick the other states by</p> <p style="text-align: right;">159</p>
<p>1 Q. Explain to me on Page 7, the Hood report, 2 Page 8, did you just take this right out of 3 Dr. Hood's report?</p> <p>4 A. Just copied it.</p> <p>5 Q. You didn't have any work product on this page?</p> <p>6 A. No.</p> <p>7 Q. All right. Turn to Table 3 and tell me what 8 that is. Is this -- yes, okay. What's 9 Table 3?</p> <p>10 A. That's the win rate.</p> <p>11 Q. For what?</p> <p>12 A. Contested -- I think there's a misprint on 13 this. No. Okay.</p> <p>14 This is contested Democratic primaries 15 win rate in 49 -- 40 to 49.9 percent districts 16 and 50 percent plus districts. These are only 17 contested elections, and it shows there's no 18 difference, that African American candidates of 19 choice or black candidates do not fare any 20 better when elections are contested in 50 21 percent plus districts as compared to 49.9 22 percent districts.</p> <p>23 Q. Okay. Turn to Table 4. Tell me what that is.</p> <p>24 A. It's the exit poll results. I believe they 25 were cited in Dr. Hood's report, and I think we</p> <p style="text-align: right;">158</p>	<p>1 comparison by population. I picked them by 2 proximity because it makes a difference in a 3 primary election cycle when in that cycle a 4 primary is held. I didn't cherry-pick these 5 states. I simply picked the states that were 6 most proximate chronologically to the 7 North Carolina primary.</p> <p>8 Q. Okay. So, in other words, the North Carolina 9 primary used to be held in May and so you 10 looked at states that had primaries in a 11 similar timeframe as the North Carolina 12 primary?</p> <p>13 A. The closest timeframe, right.</p> <p>14 Q. Why did you decide on just three other states?</p> <p>15 A. Because there were a few other states that had 16 such low black -- I don't remember exactly what 17 they were. There are not a lot of states in 18 this late stage of the primary process, and 19 these were the only states close to the 20 North Carolina timeframe for which they 21 actually estimated African American preference.</p> <p>22 Q. I'm looking at Page 12 of your report now, 23 Dynamics of Partisan Legislative Elections for 24 African American Voters.</p> <p>25 A. Yes.</p> <p style="text-align: right;">160</p>

<p>1 Q. Do you agree drawing majority black districts 2 would make the surrounding districts more 3 competitive for Republicans?</p> <p>4 A. Generally speaking, and I'd have to look at a 5 specific plan, but generically, if you are 6 drawing African American districts, according 7 to some hard-and-fixed line that is generally 8 above what creates ability districts for 9 African Americans, it is likely to make 10 surrounding districts more white and more 11 Republican as a generic rule, yes, but that 12 doesn't mean it's permissible --</p> <p>13 Q. I didn't ask that.</p> <p>14 A. -- to do that. Okay. Fair enough.</p> <p>15 Q. What's Table 5?</p> <p>16 A. Exit poll for the general election.</p> <p>17 Q. And what does it show?</p> <p>18 A. That voting was polarized in North Carolina and 19 voting was polarized nationally as well in the 20 general election.</p> <p>21 Q. Was the voting more polarized in North Carolina 22 than the national election?</p> <p>23 A. Slightly, yes.</p> <p>24 Q. 8 percentage points?</p> <p>25 A. No. 8 percentage points on the white side.</p> <p style="text-align: right;">161</p>	<p>1 A. It did, very close in both elections. And 2 again, we're dealing with not a district at 3 40 percent. We're dealing with a jurisdiction 4 about half that in terms of black voting age 5 population. And always, always when you're 6 assessing political significance, it has to be 7 specific to the concentration of African 8 Americans in the district --</p> <p>9 Q. Okay.</p> <p>10 A. -- as well as the dynamics that I describe in 11 this report.</p> <p>12 Q. What's Table 6? Wait a second. What did you 13 look at to do Table 5? Exit polls?</p> <p>14 A. Exit polls, purely exit polls.</p> <p>15 Q. Who did the exit polls?</p> <p>16 A. The same person who always does the exit polls, 17 Edison Research, and they reported it via all 18 the major networks and news outlets.</p> <p>19 Q. Are those the same people that the networks use 20 to incorrectly call elections?</p> <p>21 A. They certainly aren't, Tom. I'm glad they're 22 not. You don't call elections -- these are -- 23 the people who call elections are the people 24 who work for the networks. This is an 25 independent group.</p> <p style="text-align: right;">163</p>
<p>1 Zero percentage points on the black side.</p> <p>2 Q. So in the general election, 35 percent of the 3 whites -- and white meaning non-black, right?</p> <p>4 A. Correct, and not Hispanic.</p> <p>5 Q. Not Hispanic.</p> <p>6 A. No. It's all non-blacks. Would include a 7 small number of Hispanics and others as we 8 discussed.</p> <p>9 Q. So in North Carolina, 35 percent of the whites 10 voted for Obama, 95 percent of the blacks voted 11 for Obama and that compared nationally to 12 95 percent of the blacks who voted for Obama 13 and 43 percent of the whites who voted for 14 Obama.</p> <p>15 A. That is just pure statistics, but as we've 16 already discussed, the 35 percent crossover 17 combined with the 95 percent cohesion was 18 sufficient even in statewide with just 19 21 percent BVAP in the election for Obama.</p> <p>20 So in this particular election, even in 21 such a low concentration of African Americans, 22 the white bloc voting was not politically 23 significant.</p> <p>24 Q. Did it become politically significant in 2012 25 in North Carolina?</p> <p style="text-align: right;">162</p>	<p>1 Q. What's Table 6?</p> <p>2 A. This is the -- according to the exit polls, the 3 breakdown of the 2008 Democratic primary 4 election. It's the first two sections of 5 Table 6 and it does it in two ways.</p> <p>6 First, it looks at the exit polls and 7 it looks at -- according to the exit polls what 8 were the components of all of those who voted 9 in a Democratic primary, in other words, what 10 component was white, what component was black 11 and what component was all others.</p> <p>12 And according to the exit poll, 62 13 percent of Democratic primary voters were 14 white, 34 percent were black, 4 percent were 15 Hispanic and others, and both Hispanics and 16 others are underrepresented and blacks are very 17 much overrepresented by almost two-thirds in 18 your Democratic primary turnout.</p> <p>19 This does the same analysis except 20 rather than looking at exit polls, which is 21 what people report, it utilizes the fact that 22 in North Carolina we have turnout data by race, 23 and this is the actual turnout by race for the 24 Democratic primary in 2008, and it shows even a 25 stronger effect, that in this case, with about</p> <p style="text-align: right;">164</p>

<p>1 a 21 percent black voting age population 2 statewide, blacks comprise 37 percent of the 3 Democratic primary electorate or more than 4 three-quarters higher. And then for 2010, we 5 didn't, I believe, have an exit poll do this. 6 This looks, again, at the actual turnout. And 7 even in a very bad Democratic year, you still 8 get -- in an off year where you tend to get 9 less minority turnout than white, you still 10 have a major jump ahead in the black percentage 11 of Democratic primary voters as compared to the 12 black percentage of the voting age population 13 in North Carolina, an increase of nearly 14 60 percent.</p> <p>15 So this shows that you would expect as 16 a general rule -- and later I do district- 17 specific analysis -- the black share, the black 18 component, of a Democratic primary to be much 19 higher than the black component of the total 20 voting age population, anywhere from about 21 60 percent higher to about three-quarters 22 higher generically.</p> <p>23 Q. And so Table 6 is based upon statewide data? 24 A. Correct. I think it says that pretty clearly, 25 state turnout, state turnout.</p> <p style="text-align: right;">165</p>	<p>1 A. I think I explained that, but I'll explain it 2 again. As we saw in the statewide both by exit 3 poll analysis and by analysis of actual 4 turnout, you expect the black share of a 5 Democratic primary to be much higher than the 6 black share voting age population.</p> <p>7 By the way, that's not only true in 8 North Carolina. It's true in every state I've 9 studied. And the reason is that blacks are far 10 and away the racial group with the strongest 11 Democratic identification. Virtually all 12 blacks participate in the Democratic primary, 13 whereas whites are quite different. They 14 participate to a significant extent, sometimes 15 to a majority extent in Republican primaries.</p> <p>16 So you have one racial group 17 concentrating on one primary and you have the 18 other racial group dividing, to varying 19 extents, between the primaries. Mathematically 20 that of necessity means the group that focuses 21 on the one primary is going to have a much 22 higher turnout as a share of that primary 23 electorate than their voting age population. 24 And that is true of African Americans in 25 North Carolina, and, as I said, in every state</p> <p style="text-align: right;">167</p>
<p>1 Q. Okay. Tell me about Table 7. 2 A. Can we take a break now? 3 Q. Sure. 4 (Brief Recess: 2:36 to 2:42 p.m.) 5 BY MR. FARR: 6 Q. Dr. Lichtman, I'm just going to conclude by 7 asking you about these tables. 8 A. Sure. 9 Q. So tell me what Table 7 is. 10 A. It looks at the 40 to 49 percent black voting 11 age population districts for the two primary 12 elections I looked at, and it gives you the 13 actual, based on the voter history, the black 14 percentage of Democratic registrants and the 15 black percentage of the Democratic turnout in 16 both the 2008 and 2010 Democratic primaries.</p> <p>17 Again, so there's no confusion, this is 18 not the turnout rate of blacks. This is the 19 black share of all those who turn out. So 20 where it says 60 to -- 60.6 percent, that means 21 of those registered and of those who turn out 22 in that particular district in that year, the 23 black share is 60.6 percent.</p> <p>24 Q. Why is the turnout percentage higher than the 25 percentage of VAP in the district?</p> <p style="text-align: right;">166</p>	<p>1 I've ever studied. 2 Q. Okay. So Table 7 you list the black percentage 3 of Democrat registration and then you list the 4 black percentage of Democratic turnout. 5 A. That's correct. 6 Q. How did you get the black percentage of 7 registration for each district? 8 A. Because you register by race. 9 Q. Where did you get that data? 10 A. I think the sources are listed. 11 Q. Okay. How did you -- so the sources are listed 12 for both the black percentage of registration 13 and black percentage of turnout? 14 A. Yes. And these are state sources. I didn't 15 come up with this on my own. 16 Q. What's Table 8? Is it the same thing for 17 Senate districts? 18 A. Yes. 19 Q. What's Table 9? 20 A. Same thing for congress, congress districts. 21 Q. Looking back at Table 7 and Table 8, you say 22 African American and non-Hispanic white 23 percentage. Is that accurate to say 24 non-Hispanic white percentage? 25 A. Yes. Where is that? I'm sorry.</p> <p style="text-align: right;">168</p>

<p>1 Q. On Table 7 and Table 8. I don't see any</p> <p>2 columns in either one of these tables.</p> <p>3 A. You're right. That's a typo. I just did the</p> <p>4 African American. I looked at, because we</p> <p>5 discussed that previously, the non-Hispanic</p> <p>6 white component just to indicate that Hispanics</p> <p>7 and others were a minuscule percentage of these</p> <p>8 primaries, but I didn't include it in the table</p> <p>9 because, again, all my focus is on the African</p> <p>10 American percentages. It's consistent with my</p> <p>11 other tables.</p> <p>12 Q. Table 7, 8 and 9 shouldn't have anything in</p> <p>13 there about non-Hispanic white percentage?</p> <p>14 A. That's right. I looked at it, but it wasn't --</p> <p>15 it's not in the table. That's a typo.</p> <p>16 Q. All right. What about Table 10, what is this?</p> <p>17 A. Just a summary of these tables.</p> <p>18 Q. Explain to me how they're summarized.</p> <p>19 A. And it should read -- I think I changed the</p> <p>20 table numbering. It should read 7 to 9 not 6</p> <p>21 through 8, to make it clearer for you up on top</p> <p>22 there.</p> <p>23 Q. I gotcha.</p> <p>24 A. Okay. It's just a summary of the results. In</p> <p>25 other words, of all the districts I looked at,</p> <p style="text-align: right;">169</p>	<p>1 districts, but my assessment, since you're</p> <p>2 asking me the question, I'll answer it as best</p> <p>3 I can, is that's probably true.</p> <p>4 Q. We talked about four or so districts where</p> <p>5 blacks had won where the percentage of the</p> <p>6 black voting age population was below</p> <p>7 40 percent. We've already discussed that</p> <p>8 today.</p> <p>9 A. We have.</p> <p>10 Q. You didn't look at the registration statistics</p> <p>11 for those districts?</p> <p>12 A. I don't believe we did.</p> <p>13 Q. And there's a much higher number of blacks than</p> <p>14 the four races we've looked at who have been</p> <p>15 elected in districts that are 40 percent or</p> <p>16 above black voting age population. We could</p> <p>17 count it up right here, but it's quite a larger</p> <p>18 number, isn't it?</p> <p>19 A. Yes. There are some elected in below 40</p> <p>20 percent, which is why I stressed 40 percent is</p> <p>21 not a magic number, but, yes, overwhelmingly</p> <p>22 the substantial majority of elected African</p> <p>23 Americans in the State House and State Senate</p> <p>24 would have been elected in districts 40 percent</p> <p>25 black voting age population or more.</p> <p style="text-align: right;">171</p>
<p>1 how many had a black share of Democratic</p> <p>2 registered voters in each of these categories,</p> <p>3 how many and what percentage, by the way, as</p> <p>4 well, and how many and what percentage were in</p> <p>5 these various categories for the Democratic</p> <p>6 electorate as opposed to the Democratic</p> <p>7 registered voters in the 2008 primary.</p> <p>8 And the last two columns are same thing</p> <p>9 for 2010 Democratic primary.</p> <p>10 Q. Is it important for the ability-to-elect</p> <p>11 districts to have a black registration</p> <p>12 percentage in excess of 55 percent?</p> <p>13 A. It helps. It might not be necessary, but</p> <p>14 certainly if you're at 55 percent or greater,</p> <p>15 which you have all the time here, that</p> <p>16 indicates very strong underlying African</p> <p>17 American voting strength in Democratic</p> <p>18 primaries.</p> <p>19 Q. Looking at all the stuff we've looked at today,</p> <p>20 Dr. Lichtman, is it fair to say that most</p> <p>21 African Americans who have been elected in</p> <p>22 North Carolina have been elected in districts</p> <p>23 where the black registration in the Democratic</p> <p>24 primaries is in excess of 55 percent?</p> <p>25 A. I didn't look here at the 50 percent plus</p> <p style="text-align: right;">170</p>	<p>1 Q. And those districts that you just described</p> <p>2 also almost always have a registered black</p> <p>3 Democratic percentage of 55 percent or above?</p> <p>4 A. That's certainly true of the ones I looked at</p> <p>5 which stopped at 49.9, but I would suspect</p> <p>6 that's likely also true of the 50 percent plus.</p> <p>7 Q. Is it pretty safe to say those are going to be</p> <p>8 over 50 percent registered black?</p> <p>9 A. One would think so, yes.</p> <p>10 Q. What's table 11?</p> <p>11 A. That is the actual vote for the white</p> <p>12 incumbent, Clark Jenkins, and the two black</p> <p>13 candidates, Frankie Bordeaux and Florence</p> <p>14 Arnold Armstrong, simply duplicated from the</p> <p>15 State Board of Elections. And that's in here</p> <p>16 because Dr. Brunell -- not Dr. Brunell --</p> <p>17 Dr. Hood in his analysis gets the facts wrong</p> <p>18 about this district, stating that the two</p> <p>19 African American candidates only got I think he</p> <p>20 said something like 46 percent of the vote and</p> <p>21 that this demonstrates that you need to go over</p> <p>22 50 percent BVAP for the two African American</p> <p>23 candidates combined to go over 50 percent. In</p> <p>24 fact, he's off substantially, that even in this</p> <p>25 district which is well below 50 percent, the</p> <p style="text-align: right;">172</p>

<p>1 actual results of elections, not what he</p> <p>2 reports in his report, is already over</p> <p>3 50 percent.</p> <p>4 Q. Let me ask you this, Dr. Lichtman, did you ever</p> <p>5 study election results in the Senate district</p> <p>6 after the 2011 plans were --</p> <p>7 A. No.</p> <p>8 Q. -- were enacted?</p> <p>9 A. No.</p> <p>10 Q. Do you know whether the black percentage in</p> <p>11 this district in 2011 was increased above</p> <p>12 50 percent?</p> <p>13 A. When you say this district --</p> <p>14 Q. Senate District 3.</p> <p>15 A. I understand that, but Senate District 3 in the</p> <p>16 old plan and Senate District 3 in the new plan</p> <p>17 are not going to be the same district. So I</p> <p>18 don't think you're using the proper terms.</p> <p>19 They may have the same numbers, but they may be</p> <p>20 completely different districts. I don't know</p> <p>21 that, but I know when you create a</p> <p>22 redistricting plan, you do a lot of shuffling.</p> <p>23 Q. So do you know if the Senate -- if Senate</p> <p>24 District 3 in the current plan is above</p> <p>25 50 percent black?</p> <p style="text-align: right;">173</p>	<p>1 other words, the question I'm asking here,</p> <p>2 which I also examined previously in a different</p> <p>3 context, was, all right, we see that African</p> <p>4 Americans control the Democratic primary. What</p> <p>5 if African American candidates of choice get</p> <p>6 out of the Democratic primaries, what are their</p> <p>7 prospects in the general election.</p> <p>8 We already saw district by district</p> <p>9 that the actual win rate was 100 percent and</p> <p>10 this looks at it a little differently, looking</p> <p>11 at statewide elections involving Republicans</p> <p>12 and Democrats in general elections and seeing</p> <p>13 what the Democratic two-party percentages are</p> <p>14 in the districts, and it shows overwhelmingly</p> <p>15 these are Democratic districts.</p> <p>16 Nothing is a lock in politics, but the</p> <p>17 ability of African American candidates of</p> <p>18 choice coming out of primaries to win general</p> <p>19 elections is a near certainty in these</p> <p>20 districts.</p> <p>21 Q. Table 12 deals with House districts?</p> <p>22 A. Yes.</p> <p>23 Q. Table 13 deals with Senate districts?</p> <p>24 A. Yes.</p> <p>25 Q. Table 14 is congressional districts?</p> <p style="text-align: right;">175</p>
<p>1 A. I don't, and I don't know if that's the same as</p> <p>2 Senate District 3 in the previous plan.</p> <p>3 Q. Do you know if Clark Jenkins was defeated in an</p> <p>4 election after 2011 in Senate District 3 by a</p> <p>5 black candidate?</p> <p>6 A. That's very possible because as you can see in</p> <p>7 the old district, the black candidates got a</p> <p>8 majority of the vote. They lost because they</p> <p>9 split it. That's politics. Not the district.</p> <p>10 Q. Did you look at any elections before 2008 for</p> <p>11 Senate District 3?</p> <p>12 A. No.</p> <p>13 Q. For 2010?</p> <p>14 A. I'm sorry. You said before --</p> <p>15 Q. Did you look at any elections before 2008 in</p> <p>16 Senate District 3?</p> <p>17 A. No.</p> <p>18 Q. Do you know that -- have there been any other</p> <p>19 examples where they had multiple white</p> <p>20 candidates running against Senator Jenkins?</p> <p>21 Did you examine that?</p> <p>22 A. I did not.</p> <p>23 Q. What's Table 12?</p> <p>24 A. Now we're getting into another realm of</p> <p>25 analysis and that's general elections. In</p> <p style="text-align: right;">174</p>	<p>1 A. Yes.</p> <p>2 Q. What's Table 15?</p> <p>3 A. It's a summary of -- again, the numbering is a</p> <p>4 little off because I changed the numbers on my</p> <p>5 tables and didn't fully reflect it here. It</p> <p>6 should be 12 to 14. It's the same tables.</p> <p>7 This shows that 100 percent win rate in</p> <p>8 80 elections; 93 percent, a 60 percent or more</p> <p>9 win; and 76 percent of the time a 65 percent or</p> <p>10 more win.</p> <p>11 Q. Okay. I'm going to take a short break and then</p> <p>12 I'm finished.</p> <p>13 (Brief Recess: 2:56 to 2:58 p.m.)</p> <p>14 BY MR. FARR:</p> <p>15 Q. Dr. Lichtman, I've got one, maybe two more</p> <p>16 questions.</p> <p>17 We just went through Exhibit 9 where</p> <p>18 there was a typo in a couple of those pages</p> <p>19 with charts where you referred to non-Hispanic</p> <p>20 whites.</p> <p>21 A. Yeah.</p> <p>22 Q. Is it fair to say that you didn't determine the</p> <p>23 non-Hispanic white percentages in these</p> <p>24 districts in any of your reports that you've</p> <p>25 done?</p> <p style="text-align: right;">176</p>

<div>1A. I did determine it, and we discussed it mostly</div> <div>2in terms of the fact that when you add together</div> <div>3the non-Hispanic whites and the blacks, it's</div> <div>4pretty much, except for low single digits, the</div> <div>5entire electorate. So you can very closely</div> <div>6approximate it from the African American</div> <div>7component, but I was just being consistent</div> <div>8since in all my other tables I was looking at</div> <div>9the African American concentration. That's</div> <div>10what I did here.</div> <div>11Q. But you didn't in any of your reports actually</div> <div>12report the non-Hispanic white population?</div> <div>13A. I believe that's right.</div> <div>14Q. Okay. That's all I have.</div> <div>15MS. EARLS: I have just one question.</div> <div>16EXAMINATION</div> <div>17BY MS. EARLS:</div> <div>18Q. We can go back to Exhibit 1 to this deposition.</div> <div>19A. You have my copy. What page?</div> <div>20Q. Page 23.</div> <div>21A. I'm there.</div> <div>22Q. And you were asked -- I think you read into the</div> <div>23record this morning parts of that paragraph.</div> <div>24My question is: You in that paragraph</div> <div>25reference the expert reports of Ray Block and</div> <div>177</div>	<div>1ACKNOWLEDGEMENT OF DEPONENT</div> <div>2</div> <div>3I, ALLAN J. LICHTMAN, Ph.D., declare under</div> <div>4the penalties of perjury under the State of North</div> <div>5Carolina that I have read the foregoing pages, which</div> <div>6contain a correct transcription of answers made by me</div> <div>7to the questions therein recorded, with the</div> <div>8exception(s) and/or addition(s) reflected on the</div> <div>9correction sheet attached hereto, if any.</div> <div>10Signed this the day of , 2016.</div> <div>11</div> <div>12</div> <div>13ALLAN J. LICHTMAN, Ph.D.</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>179</div>																																																			
<div>1Thomas Brunell and then in your testimony today</div> <div>2you've talked about why these reports were</div> <div>3inaccurate. Can you explain why you referenced</div> <div>4them here in this report?</div> <div>5A. Just because the State of North Carolina, who</div> <div>6was the defendants in the VIVA case, had</div> <div>7affirmed racially polarized voting in this</div> <div>8redistricting case. That's the sole reason.</div> <div>9I did not in this statement and</div> <div>10certainly did not mean in this statement to say</div> <div>11I endorsed any of the findings of the Block or</div> <div>12the Brunell report.</div> <div>13MS. EARLS: That's all I have.</div> <div>14[SIGNATURE RESERVED]</div> <div>15[DEPOSITION CONCLUDED AT 3:00 P.M.]</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>178</div>	<div>1ERRATA SHEET</div> <div>2Case Name: Covington, et al. vs. The State of NC, et al.</div> <div>3Witness Name: ALLAN J. LICHTMAN, Ph.D.</div> <div>4Deposition Date: Friday, February 12, 2016</div> <div>5</div> <div>6<table><tr><th>Page/Line</th><th>Reads</th><th>Should Read</th></tr><tr><td>7</td><td>/</td><td></td></tr><tr><td>8</td><td>/</td><td></td></tr><tr><td>9</td><td>/</td><td></td></tr><tr><td>10</td><td>/</td><td></td></tr><tr><td>11</td><td>/</td><td></td></tr><tr><td>12</td><td>/</td><td></td></tr><tr><td>13</td><td>/</td><td></td></tr><tr><td>14</td><td>/</td><td></td></tr><tr><td>15</td><td>/</td><td></td></tr><tr><td>16</td><td>/</td><td></td></tr><tr><td>17</td><td>/</td><td></td></tr><tr><td>18</td><td>/</td><td></td></tr><tr><td>19</td><td>/</td><td></td></tr><tr><td>20</td><td>/</td><td></td></tr><tr><td>21</td><td>/</td><td></td></tr><tr><td>22</td><td>/</td><td></td></tr></table></div> <div>23</div> <div>24</div> <div>25SignatureDate</div> <div>180</div>	Page/Line	Reads	Should Read	7	/		8	/		9	/		10	/		11	/		12	/		13	/		14	/		15	/		16	/		17	/		18	/		19	/		20	/		21	/		22	/	
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<p>1 STATE OF NORTH CAROLINA)</p> <p>2) CERTIFICATE</p> <p>3</p> <p>4 I, DENISE MYERS BYRD, Court Reporter and Notary</p> <p>5 Public, the officer before whom the foregoing proceeding was</p> <p>6 conducted, do hereby certify that the witness whose testimony</p> <p>7 appears in the foregoing proceeding were duly sworn by me;</p> <p>8 that the testimony of said witness was taken by me to the</p> <p>9 best of my ability and thereafter transcribed under my</p> <p>10 supervision; and that the foregoing pages, inclusive,</p> <p>11 constitute a true and accurate transcription of the testimony</p> <p>12 of the witness(es).</p> <p>13 Before completion of the deposition, review of</p> <p>14 the transcript [X] was [] was not requested. If requested,</p> <p>15 any changes made by the deponent (and provided to the</p> <p>16 reporter) during the period allowed are appended hereto.</p> <p>17 I further certify that I am neither counsel</p> <p>18 for, related to, nor employed by any of the parties to this</p> <p>19 action, and further, that I am not a relative or employee of</p> <p>20 any attorney or counsel employed by the parties thereof, nor</p> <p>21 financially or otherwise interested in the outcome of said</p> <p>22 action. Signed this 25th day of February 2016.</p> <p>23</p> <p>24</p> <p>25 Denise Myers Byrd</p> <p> CSR 8340, RPR, CLR 102409-02</p> <p>181</p>	